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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ELIZABETH CROSSON, KIMI
JANSON, MARTHA ASAPH,
KAREN HOMMAN, MATTHEW
CURE, KATHRYN ELIZA WALSH,
RACHEL OTTO, DUANE INOUE,
LAURA RAY, ROBERT
PERRYMAN, CYNTHIA
KIRTLAND, and, WILLIAM
HARLAN and EMILY DIZNOFF,
individually and on behalf of all
others similarly situated,

,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF
AMERICA, INC., and
VOLKSWAGEN AG

Defendants.

No.

CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL

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I. INTRODUCTION

Plaintiffs Elizabeth Crosson, Kimi Janson, Martha Asaph, Karen Homman, Matthew Cure, Kathryn Eliza Walsh, Rachel Otto, Duane Inoue, Laura Ray, Robert Perryman, Cynthia Kirtland, and William Harlan and Emily Diznoff (“Plaintiffs”), individually and on behalf of all others similarly situated, allege the following against Volkswagen Group of America, Inc. and Volkswagen AG (“Defendants” or “Volkswagen”) based where applicable on personal knowledge, information and belief, and the investigation of counsel. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d).

II. NATURE OF THE ACTION

1. This action is not about corporate negligence; rather, it is about a global auto manufacturer’s intentional deception of well-meaning, conscientious consumers and regulators, and its large scale, misguided plan to profit by gaming the system rather than playing by the rules.

2. This nationwide class action concerns the intentional installation of so-called defeat devices on at least 482,000 diesel Volkswagen and Audi vehicles sold in the United States since 2009 (“Defeat Device Vehicles”). Defendants marketed those vehicles as environmentally-friendly cars that possessed the holy grail of automotive qualities: extremely high fuel efficiency and performance, with

1 very low emissions. Although Defendants successfully marketed these expensive
2 cars as “green,” their environmentally-friendly representations were a sham.
3
4 Defendants did not actually make cars with those desirable and advertised
5 attributes.

6
7 3. According to the U.S. Environmental Protection Agency (EPA),
8 Volkswagen installed its “defeat device” in at least the following diesel models of
9 its vehicles: Model Year (“MY”) 2009-2015 Jetta; MY 2009-2014 Jetta
10 Sportswagon, MY 2012-2015 Beetle and Beetle Convertible; MY 2010-2015 Golf;
11 MY 2015 Gold Sportswagon; MY 2012-2015 Passat; and MY 2010-2015 Audi A3.
12
13 The California Air Resources Board is currently investigating whether the
14 Defendants installed the device in other cars as well, so additional vehicle models
15 and model years may be added to this list when new facts are discovered.
16

17 4. Instead of delivering on their promise of extremely high fuel mileage
18 coupled with low emissions, Defendants devised a way to make it appear that their
19 cars did what they said they would when, in fact, they did not. Put simply,
20 Defendants lied and continued to lie after the fact.
21

22
23 5. As Michael Horn, President and CEO of Volkswagen Group of
24 America, reportedly admitted before unveiling the 2016 Volkswagen Passat in
25 New York on September 21, 2015:
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1 As you have seen since Friday, the EPA, the Environmental Protection
2 Agency, has issued a statement and reality that Volkswagen Group
3 manipulated engine software in our TDI diesel cars, and we violated
4 emissions standards. The CEO of our parent company, Dr. Martin
5 Winterkorn, said yesterday Volkswagen will fully cooperate with the
6 responsible agencies, and much much more important as I see it, he
7 stated that he was personally and deeply sorry for this—that
8 Volkswagen has broken the trust of our customers, and the public here
9 in America. And lastly he stated that this matter, and this is I think
10 common sense, now this is the first priority for him personally and for
11 the entire Board of Management. So let's be clear about this: our
12 company was dishonest with the EPA and the California Air Resources
13 Board, and with all of you. And in my German words, we've totally
14 screwed up. We must fix those cars, and prevent this from ever
15 happening again, and we have to make things right—with the
16 government, the public, our customers, our employees, and also very
17 importantly our dealers. This kind of behavior, I can tell you out of my
18 heart, is completely inconsistent with our core values. The three core
19 values of our brand are value, innovation, and in this context very
20 importantly, responsibility: for our employees, for our stakeholders,
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1 and for the environment. So it goes totally against what we believe is
2 right. Along with our German headquarters, we are committed to do
3 what must be done, and to begin to restore your trust.
4

5 6. As Mr. Horn admitted, Volkswagen “screwed up.” It did so by
6 intentionally designing and installing defeat devices that work by switching on the
7 full emissions control systems in Defendants cars only when the car is undergoing
8 periodic emissions testing. The technology needed to control emissions from
9 Defendants’ cars to meet state and federal emissions regulations reduces their
10 performance, limiting acceleration, torque, and fuel efficiency.
11

12 7. To hide this, the defeat device simply shuts off most of the emissions
13 control systems in the car once the car has completed its emissions test. While that
14 might have made the cars more fun to drive, it resulted in Defendants cars sending
15 up to 40 times as much pollution into the environment as is allowed under the
16 Clean Air Act and state regulations.
17

18 8. As of September 21, 2015, *The New York Times* reported that while it
19 is possible to lower the levels of nitrogen oxide emitted by diesel engines, the
20 software Volkswagen installed instead:
21

22 “[S]idestepped this trade-off by giving a misleadingly low
23 nitrogen-oxide reading during [standard emissions] tests. The software
24 measured factors like the position of the steering wheel, the vehicle’s
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1 speed and even barometric pressure to sense when the car was being
2 tested....”

3
4 9. As of today, Volkswagen has admitted that approximately 11 million
5 vehicles worldwide are affected by its deception. Defendants stocks have
6 plummeted and it reportedly is “setting aside the equivalent of half a year’s
7 profits—6.5 billion euros, or about \$7.3 billion” in a preemptive maneuver to
8 downplay public scrutiny. In a statement issued today by the Executive Committee
9 of Volkswagen AG’s Supervisory Board, the Committee “recognizes...the
10 economic caused [by the manipulation of the emissions data.]”¹
11

12
13 10. Defendants’ violations are explained in a Notice of Violation the EPA
14 issued to Defendants, as well as a letter from the California Air Resources Board
15 (“CARB”), copies of which are attached to this Class Action Complaint as Exhibits
16 A and B, respectively.
17

18
19 11. Because of Defendants actions, the cars it sold to Plaintiffs are not
20 what was promised by Volkswagen. They are not environmentally friendly,
21 “clean” diesels. Instead, they are dirty diesels: cars that pollute so much that they
22 violate state and federal environmental protection laws. Moreover, when the
23 emissions systems designed to decrease pollution are activated, the cars’
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¹ <http://media.vw.com/release/1071/>

1 performance is diminished and they get worse mileage than advertised by
2 Volkswagen.

3
4 12. These untenable circumstances not only undermine the reasons
5 consumers paid a premium for their purportedly “clean” diesel cars but
6 substantially decrease the resale value of the vehicles.
7

8 **III. PARTIES**

9 13. Plaintiff Elizabeth Crosson is a resident and citizen of Los Angeles,
10 Los Angeles County, California.

11
12 14. Plaintiff Kimi Janson is a resident and citizen of Cincinnati, Hamilton
13 County, Ohio.

14
15 15. Plaintiff Martha Asaph is a resident and citizen of Cotopaxi, Fremont
16 County, Colorado.

17
18 16. Plaintiffs Karen Homman and Matthew Cure are residents and
19 citizens of Baltimore, Baltimore County, Maryland.

20
21 17. Plaintiff Kathryn Eliza Walsh is a resident and citizen of Meggett,
22 Charleston County, South Carolina.

23
24 18. Plaintiff Rachel Otto is a resident and citizen of Salt Lake City, Salt
25 Lake County, Utah.

26
27 19. Plaintiff Duane Inoue is a resident and citizen of Mililani, Honolulu
28 County, Hawaii.

1 20. Plaintiff Laura Ray is a resident and citizen of Sewanee, Franklin
2 County, Tennessee.

3
4 21. Plaintiff Robert Perryman is a resident and citizen of Stigler, Haskell
5 County, Oklahoma.

6 22. Plaintiff Cynthia Kirtland is a resident and citizen of Red Hook,
7 Dutchess County, New York.

8
9 23. Plaintiffs William Harlan and Emily Diznoff are residents and citizens
10 of Barnardsville, Buncombe County, North Carolina.

11
12 24. Volkswagen Group of America, Inc. (“Volkswagen”) is a corporation
13 doing business in every U.S. state and the District of Columbia, and is organized
14 under the laws of New Jersey, with its principal place of business at 2200
15 Ferdinand Porsche Dr., Herndon, Virginia 20171. Volkswagen is therefore a
16 citizen of New Jersey and Virginia. *See* 28 U.S.C. § 1332(d)(10).

17
18 25. Volkswagen AG is the parent corporation and sole owner of
19 Volkswagen Group of America, Inc. (collectively “Volkswagen”). Volkswagen
20 AG is based in Germany and directly controls and directs the actions of
21 Volkswagen Group of America, Inc., which acts as its agent in the United States.
22
23 As a result, this Court has specific jurisdiction over Volkswagen AG.

24
25 26. At all relevant times, Volkswagen manufactured, distributed, sold,
26 leased, and warranted the Defeat Device Vehicles under the Volkswagen and Audi
27
28

1 brand names throughout the nation. Volkswagen and/or its agents designed the
2 CleanDiesel engines and engine control systems in the Defeat Device Vehicles,
3 including the “defeat device.” Volkswagen also developed and disseminated the
4 owners’ manuals and warranty booklets, advertisements, and other promotional
5 materials relating to the Defeat Device Vehicles.
6

7 8 **IV. JURISDICTION AND VENUE**

9 27. This Court has jurisdiction over this action pursuant to the Class
10 Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because at least one Class
11 member is of diverse citizenship from one Defendants, there are more than 100
12 Class members, and the aggregate amount in controversy exceeds \$5 million,
13 exclusive of interest and costs.
14

15 28. This Court has personal jurisdiction over Defendants Volkswagen
16 Group of America, Inc., because it conducts business in Virginia, and has
17 sufficient minimum contacts with Virginia.
18

19 29. This Court has specific jurisdiction over Volkswagen AG because it
20 has purposefully availed itself of this forum by directing its agents and distributor –
21 Volkswagen Group of America – to take action here.
22

23 30. Volkswagen AG is the sole owner of Volkswagen Group of America.
24 It uses its agent, Volkswagen Group of America, to sell its cars in the United
25 States. Not only does Volkswagen AG use its agent, Volkswagen Group of
26
27
28

1 America, to perform this critical work, it also intimately directs the actions of
2 Volkswagen Group of America, ranging from minute production line decisions to
3 broad marketing strategies.
4

5 31. The remarkable level of centralized and intimate control Volkswagen
6 AG and former CEO Winterkorn exert over Volkswagen Group of America is well
7 documented. Volkswagen AG itself describes this highly-centralized structure in
8 its corporate governance document as follows: Volkswagen AG “targets and
9 requirements [are] laid down by the Board of Management of Volkswagen AG or
10 the Group Board of Management [and] must be complied with in accordance with
11 the applicable legal framework.” This top-down governance manifests in
12 Volkswagen AG’s intimate management of Volkswagen Group of America. For
13 example, in 2011, when Dr. Winterkorn visited the newly built Volkswagen plant
14 in Tennessee, Bloomberg Business reported that “he berated staff for hanging
15 chrome parts for air vents, doors and gear shifts on the wall. To check that they
16 uniformly glistened before agreeing to use them in the sedan, he wanted them
17 displayed on a table with light shining down at the same angle that customers
18 would see the parts in the car.”
19
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24 32. That single plant in Chattanooga, Tennessee is Volkswagen AG’s
25 only plant in the United States, and it conducts final assembly of only one of the
26 numerous models that Volkswagen AG sells in the United States. Even then, the
27
28

majority of components and parts are manufactured in Volkswagen AG factories in Europe and around the world, or purchased from vendors, and shipped to Tennessee to be assembled. The other models that Volkswagen Group of America markets and sells in the United States, including vehicles at issue in this lawsuit, are assembled elsewhere in the world, including in Puebla, Mexico and Ingolstadt and Wolfsburg, Germany. The 2.0 liter TDI engines that each of the affected vehicles uses are among the components manufactured by Volkswagen AG factories outside the United States, as are the exhaust system components used to regulate emissions. In sum, Volkswagen AG exerts significant, and sometimes total, control over the design, technology, marketing, and manufacturing of the vehicles it sells through Volkswagen Group of America.

33. Bloomberg Business has also noted that “[d]ecision-making at Volkswagen is highly centralized. Winterkorn and a couple dozen managers vet product plans in Wolfsburg, including detailed lists of components that differentiate between new and standardized parts. Winterkorn was aiming to loosen that structure by pushing more authority to brand and regional managers.” Volkswagen AG’s attempts to decentralize are not new; indeed as far back as 2007 *The New York Times* reported that Volkswagen AG was undergoing a “broad reorganization that would centralize control over its myriad brands [including Volkswagen Group of America] and cement the power of its new chief executive,

1 Martin Winterkorn.” Whatever decentralization Mr. Winterkorn was hoping to
2 accomplish, however, has not come to pass, as he has now stepped down as
3 Volkswagen’s CEO. In short, Volkswagen AG tightly controls the actions of its
4 agent, Volkswagen Group of America, to perform the critical task of selling its cars
5 in the United States. As a result, this Court has specific jurisdiction over
6 Volkswagen AG.
7

8
9 34. Venue is proper in this District under 28 U.S.C. § 1391(b) because a
10 substantial part of the events or omissions giving rise to the claims occurred and/or
11 emanated from this District, and because Defendants have caused harm to Class
12 members residing in this District.
13

14 V. FACTS

15
16 35. Defendants intentionally designed and sold cars that misled
17 consumers and regulators about the amount of pollution those cars created and the
18 fuel efficiency they produced. Despite touting themselves as an environmentally
19 conscientious company that produced thoughtful cars for people who cared about
20 the environment, Defendants sold expensive cars that produced pollution at orders
21 of a magnitude above federal and state regulations, and then intentionally and
22 knowingly hid the truth about those cars.
23

24 A. Defendants Touts Their Diesel Vehicles as Being Fuel Efficient and 25 Good for the Environment

26
27 36. For years, Volkswagen has advertised its diesel vehicles as low-
28

1 emission, fuel-efficient cars. Indeed, this marketing message is at the core of its
2 image in the United States. It has been a successful advertising campaign;
3 Volkswagen has become the largest seller of diesel passenger vehicles in the
4 United States.
5

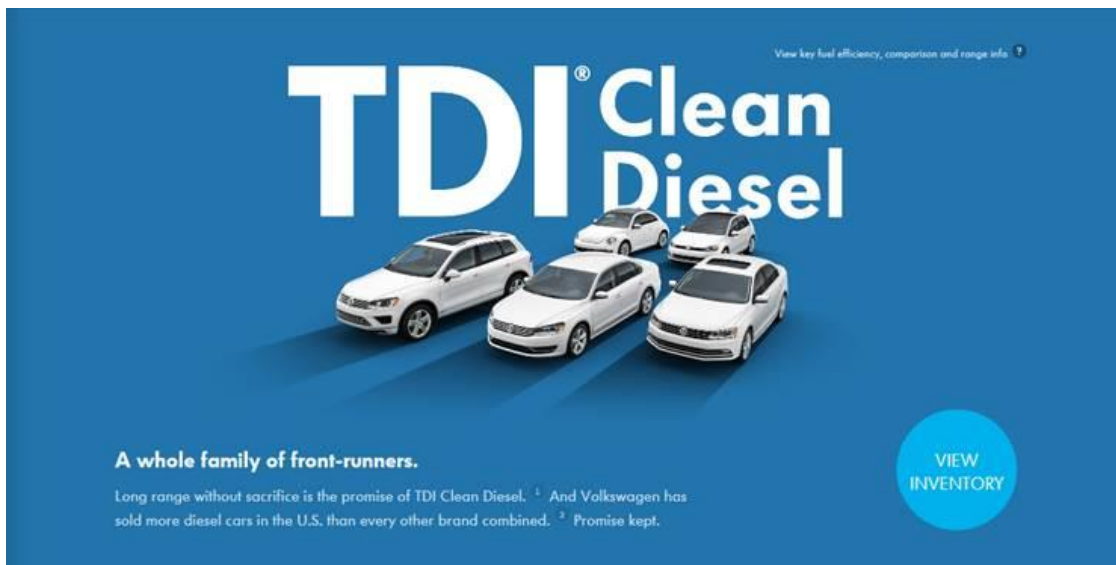
6 37. Defendants' success is based in large part on promoting their diesel
7 cars as "clean" and "green" vehicles. Indeed, being both highly efficient and
8 "clean" are the centerpieces of Defendants diesel engine marketing campaign.
9
10



24 "CleanDiesel" is in the very name of the vehicles about which Defendants lied.

25 38. And Defendants continued to lie. Although Volkswagen was aware of
26 the recall and defect concerning the Defeat Device Vehicles, it continued to
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28

mislead consumers in advertisements appearing on its webpage as recently as September 21, 2015. These ads, pictured below, are rapidly being removed from Volkswagen's websites in an attempt to further hide its wrongdoing. Defendants continued to represent the Defeat Device Vehicles as "cleandiesel" and that it "...has sold more diesel cars in the U.S. than every other brand combined. ***Promise kept.***"² (emphasis added).



39. Volkswagen's apparent concern for the environment is evident beyond just the model names and purported attributes of their vehicles. For example, on the "Environment" page of its website, Volkswagen Group of America states that it takes "environmental responsibility very seriously. When it comes to making our cars as green as possible, Volkswagen has an integrated

² See <http://www.vw.com/features/clean-diesel/> (last visited Sept. 21, 2015). The content has since been removed.

1 strategy focused on reducing fuel consumption and emissions, building the world's
2 cleanest diesel engines and developing totally new power systems, which utilize
3 new fuel alternatives.”
4

5 40. Volkswagen bolsters its apparent environmental bone fides by
6 trumpeting the fact that the Audi A3 TDI and VW Jetta TDI were named the 2010
7 Green Car of the Year and the 2009 Green Car of the Year, respectively.
8

9 41. As recently as September 21, 2015,³ Defendants continued to mislead
10 consumers, touting the supposedly reduced greenhouse gas emission of its vehicles
11 on its “CleanDiesel” webpage. That misleading statement has since been removed.
12



27 ³ See <http://www.audiusa.com/technology/efficiency/tidi?csref=116751439289858719> (last
28 visited Sept. 21, 2015). The content has since been removed.

1 42. Defendants also launched a “Think Blue” program, which they
2 explained is part of their policy of being “more responsible on the road and more
3 environmentally conscious—not just in our cars.”
4

5 43. Beyond merely advertising, Defendants supported and directed a
6 website to promote its “clean” diesel technology, www.clearlybetterdiesel.org,
7 which says the technology reduces smog and “meets the highest standards in all 50
8 states, thanks to ultra-low sulfur diesel (ULSD) fuel and innovative engine
9 technology that burns cleaner.”
10

11 44. Defendants goes for far as to use the tagline “Truth in Engineering” to
12 promote its Audi brand:
13



22 45. Unfortunately for consumers who bought Defendants cars and for
23 people who breathe the air into which Defendants cars emit extraordinary amounts
24 of pollutants, Defendants engineering was far from “truthful.” Volkswagen has
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1 designed and sold cars that emit pollutants at breath-taking levels, failing state and
2 federal environmental regulations by incredible margins.
3

4 **B. Volkswagen Intentionally Hid the Excessive and Illegal Levels of**
5 **Pollution Emitted from its Cars.**

6 46. The EPA's investigation of Volkswagen was prompted by a May 15,
7 2014, publication titled "In-Use Emissions Testing of Light-Duty Diesel Vehicles
8 in the United States" by the Center for Alternative Fuels, Engines & Emissions
9 (CAFEE) at West Virginia University ("the CAFEE Report").
10

11 47. CAFEE was contracted by the International Council of Clean
12 Transportation (ICCT) to conduct in-use testing of three light-duty diesel vehicles.
13 According to the CAFEE Report, in the tested vehicles "real-world NOx emissions
14 were found to exceed the US-EPA ... standard by a factor[s] of 5 to 35."
15

16 48. Those findings show that, contrary to Volkswagen's self-promotion as
17 a "green" company, its diesel cars are unhealthy and unlawful.
18

19 49. On September 18, 2015, the EPA issued a Notice of Violation
20 ("NOV"). The NOV explains that Defendants have installed sophisticated software
21 in the Volkswagen and Audi diesel vehicles sold by Defendants in the United
22 States that detects when the vehicle is undergoing official emissions testing and
23 turns full emissions controls on only during the test. At all other times that the
24 vehicle is running, however, the emissions controls are deactivated, meaning that
25 pollution is freely released into the environment at levels that exceed those allowed
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1 by federal and state clean air regulators. This software produced and used by
2 Volkswagen is a “defeat device” as defined by the Clean Air Act.

3
4 50. Most modern engines, including Volkswagen’s “CleanDiesel”
5 engines, use computerized engine control systems to monitor sensors throughout a
6 car’s engine and exhaust systems and control operation of the car’s systems to
7 ensure optimal performance and efficiency. These functions can include
8 controlling fuel injection, valve and ignition timing, and, as in Volkswagen’s
9 “CleanDiesel” engines, operating the engine’s turbocharger. The engine control
10 computer can, for example, ensure that the air-to-fuel mixture is correct based on
11 sensor readings such as throttle position, amount of air flowing into the engine, and
12 engine temperature.

13
14
15 51. These engine control computers also receive data from sensors in the
16 car’s exhaust system that measure the amounts of chemical substances included in
17 the car’s exhaust. That data provides a measure of the engine’s operation and
18 efficiency, and is thus used by the engine control computer in operating the car’s
19 systems to ensure the desired performance and efficiency.

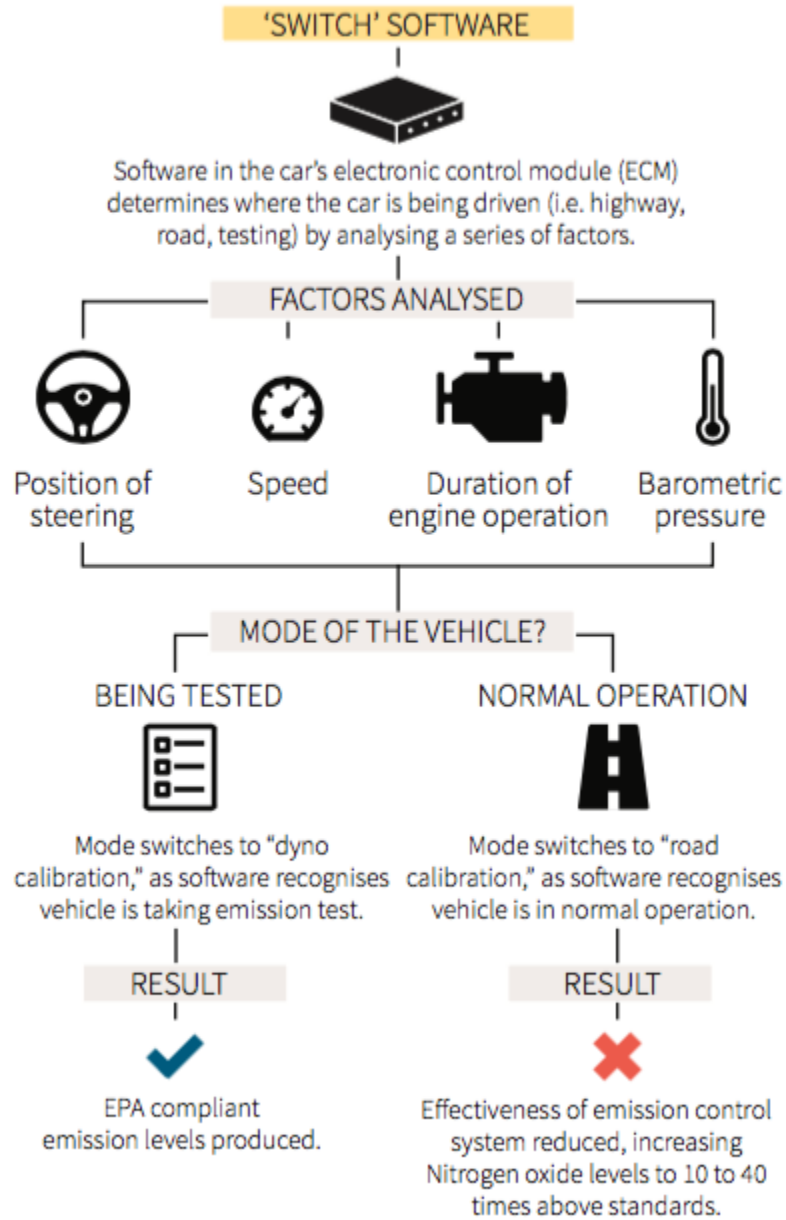
20
21
22 52. Because modern cars include these sophisticated computers and
23 sensors throughout the car’s systems, emissions testing sometimes uses a car’s
24 existing sensors to measure the presence of pollutants and track compliance with
25 EPA and state emissions standards. Emissions testing stations plug a diagnostic
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1 device into the car's on-board diagnostics ("OBD II") port and use the car's
2 exhaust sensors during the testing procedure to measure the substances emitted.
3
4 Some states, instead of or in addition to an OBD II diagnostic device, use a
5 measurement probe inserted into the car's exhaust pipe to measure the chemicals
6 emitted.
7

8 53. Volkswagen programmed the engine control computers in the Defeat
9 Device Vehicles with software that detects when the cars are undergoing emissions
10 testing, and then operates the car's engine and exhaust systems to ensure that
11 emissions comply with EPA pollutant standards. When the car is not being
12 emissions tested—that is, under the vast majority of operating conditions—the
13 engine control systems operate the vehicle in a manner that does not comply with
14 EPA emissions requirements.
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17 54. This graphic prepared by Reuters summarizes that process:
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How Volkswagen's defeat device works



Source: U.S. Environmental Protection Agency

J. Wang, 22/09/2015

REUTERS

55. In short, this software allows Defendants diesel vehicles to meet emissions standards in labs or state testing stations while permitting the vehicles to

1 emit nitrogen oxides (NOx) at up to 40 times the standard allowed under United
2 States laws and regulations during the normal operation of the vehicles.

3
4 56. As the journal Popular Mechanics reported, non-Volkswagen diesels
5 commonly use urea injection to “neutralize” NOx emission, but those systems add
6 weight and complexity to the engine. “Everyone wondered how VW met emissions
7 standards while foregoing urea injection. As it turns out, they didn’t. It wasn’t
8 magical German engineering. Just plain old fraud,” the journal reported.

9
10 57. NOx pollution contributes to nitrogen dioxide, ground-level ozone,
11 and fine particulate matter. Exposure to these pollutants has been linked with
12 serious health dangers, including asthma attacks and other respiratory illness
13 serious enough to send people to the hospital. Ozone and particulate matter
14 exposure have been associated with premature death due to respiratory-related or
15 cardiovascular-related effects. Children, the elderly, and people with pre-existing
16 respiratory illness are at an acute risk of health effects from these pollutants.

17
18 58. The Clean Air Act has strict emissions standards for vehicles, and it
19 requires vehicle manufacturers to certify to the EPA that the vehicles sold in the
20 United States meet applicable federal emissions standards to control air pollution.
21 Every vehicle sold in the United States must be covered by an EPA-issued
22 certificate of conformity. Under federal law, cars equipped with defeat devices,
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1 which reduce the effectiveness of emissions control systems during normal driving
2 conditions, cannot be certified.

3
4 59. This is not the first time Volkswagen allegedly engineered vehicles to
5 cheat emission standards. As reported by the *Los Angeles Times*, Volkswagen paid
6 a \$120,000 fine to EPA in 1974 in order to settled charges that “it gamed pollution
7 control systems in four models by changing carburetor settings and shutting off an
8 emissions-control system at low temperatures.”

9
10 60. Volkswagen apparently did not learn from that experience. By
11 manufacturing and selling cars with defeat devices that allowed for higher levels of
12 emissions than were certified to the EPA, Volkswagen violated the Clean Air Act,
13 defrauded its customers, and engaged in unfair competition under state and federal
14 laws.
15

16
17 **C. Defendants Have Profited Handsomely From Their Diesel Vehicles.**

18 61. Defendants charge substantial premiums for the Defeat Device
19 Vehicles. For example, according to Defendants website, for the 2015 Volkswagen
20 Jetta, the base S model with a gasoline engine has a starting MSRP of \$18,780.
21 The base TDI S CleanDiesel, however, has a starting MSRP of \$21,640, a price
22 premium of \$2,860. The CleanDiesel premium compared to the highest trim Jetta
23 models with a comparable four-cylinder turbocharged gasoline engine is
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1 substantially higher: The Jetta SE has a starting MSRP of \$20,095, while the
2 CleanDiesel TDI SEL MSRP is \$26,410, a 31% premium.
3

4 62. These premiums occur across all of the vehicles in which Defendants
5 installed its “defeat device” for emissions testing, ranging from roughly \$1000 for
6 a mid-tier Golf, to \$2,900 for a base-level diesel Jetta, to nearly \$7,000 for a top-
7 line diesel Passat.
8

9 **D. Volkswagen’s Illegal Actions Have Caused Class Members Significant**
10 **Harm.**

11 63. The EPA has ordered Defendants to recall the Defeat Device Vehicles
12 and repair them so that they comply with EPA emissions requirements. But that
13 recall will not compensate Plaintiffs and the class for the significant harm
14 Defendants deception has caused. That is true for at least two reasons.
15

16 64. First, any repairs performed as part of the recall are likely to diminish
17 the performance of the Defeat Device Vehicles. Volkswagen will likely not be able
18 to make those vehicles compliant with state and federal regulations without
19 degrading performance, fuel efficiency, or both. That is so because any solution
20 will likely involve reprogramming the Defeat Device Vehicles’ software to engage
21 the emissions control equipment (which currently only operates when the vehicles
22 are being emissions tested) at all times in a manner that reduces engine power and
23 fuel economy to bring NOx emissions within legal limits. Plaintiffs’ and Class
24 members’ cars will therefore not perform as advertised.
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1 65. Second, the recall cannot compensate for the financial damages they
2 have suffered, including the premium Plaintiffs and the Class paid for their “clean”
3 diesel vehicles, the inevitable reduction in resale value caused by the recall, and the
4 increase in fuel expenses as the vehicles’ become less efficient following
5 reprogramming.
6

7
8 66. For those reasons, as a result of Volkswagen’s unfair, deceptive,
9 and/or fraudulent business practices, and its failure to disclose that under normal
10 operating conditions the Defeat Device Vehicles emit 40 times the allowed levels,
11 owners and/or lessees of the Defeat Device Vehicles have suffered losses in money
12 and/or property.
13

14
15 67. Had Plaintiffs and Class members known of the “defeat device” at the
16 time they purchased or leased their Defeat Device Vehicles, they would not have
17 purchased or leased those vehicles, or would have paid substantially less for the
18 vehicles than they did.
19

20 68. According to media sources, Volkswagen’s CEO, Martin Winterkorn,
21 said in a statement that he was “deeply sorry that we have broken the trust of our
22 customers and the public,” and that Defendants would be suspending sales of some
23 2015 and 2016 vehicles with 2.0 liter diesel engines. While Defendants candor
24 about its breach of trust is notable, it cannot compensate Plaintiffs and Class
25 members for the damages they have incurred.
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VI. PLAINTIFFS' FACTS

70. Plaintiff Elizabeth Crosson is a resident of Los Angeles, California.

72. Currently, she owns a 2010 Jetta TDI, which she bought as a Volkswagen Certified Pre-Owned vehicle from a Volkswagen dealership in Santa Monica, California.

73. To the best of her recollection, Ms. Crosson purchased her diesel Jetta for approximately \$18,000, which represented a significant premium over the equivalent gasoline version.

74. Ms. Crosson is an environmental attorney who is deeply concerned about air quality and the impacts vehicle emissions have on human health and the environment.

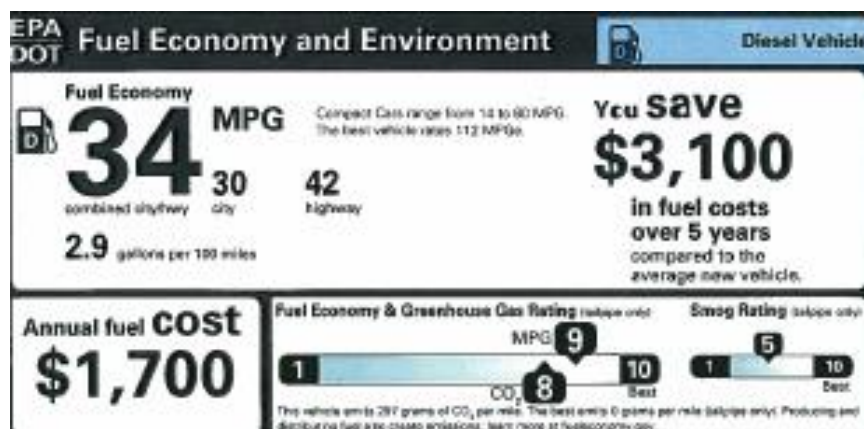
75. Ms. Crosson chose the diesel Jetta because Volkswagen advertised the vehicle as “CleanDiesel,” offering efficient fuel economy and environmentally friendly emissions combined with excellent performance.

76. Ms. Crosson would never have purchased the car in the first place if she knew the truth about its emission levels, and is disappointed that she bought a car the Defendants represented to her pollutes far less than it actually does. She is concerned that any fix Defendants implement will diminish performance and fuel economy. She would never have bought the car if it did not offer the combination of performance, fuel economy, and clean emissions that Defendants advertised.

B. Plaintiff Kimi Janson

77. Plaintiff Kimi Janson, a resident of Cincinnati, Ohio, purchased a 2013 Volkswagen Jetta TDI new from a dealership in Fairfield, Ohio, on or about October 29, 2012. She paid \$27,330.

78. The Jetta she purchased included the following environmental information on a window decal:



79. Ms. Janson chose the Jetta TDI primarily because Volkswagen advertised the vehicle as “CleanDiesel,” offering efficient fuel economy and environmentally friendly emissions combined with excellent performance.

1 80. Ms. Janson planned to drive the car for as long as it ran, or possibly to
2 drive it for at least eight years before giving it to a family member. Because she
3 planned to keep the car for a long time, she also purchased the longest extended
4 warranty available. Now that she has learned that the car is much less
5 environmentally friendly than advertised, she no longer wishes to drive the car as
6 much or for as long. However, selling the car is not an attractive option because,
7 due to Volkswagen's conduct, the resale value has been severely diminished.
8

9 81. Ms. Janson would never have purchased the car in the first place if she
10 knew the truth about its emission levels, and is disappointed that she bought a car
11 that Defendants represented to her pollutes far less than it actually does. She is
12 concerned that any fix Defendants implements will diminish performance and fuel
13 economy. She would not have bought the car if it did not offer the combination of
14 performance, fuel economy, and clean emissions that Defendants advertised.
15

16
17 **C. Plaintiff Martha Asaph**
18

19 82. Plaintiff Asaph, a resident of Cotopaxi, Colorado, bought a new 2011
20 Jetta Sportwagen TDI at a dealership in Colorado Springs, Colorado, on May 24,
21 2011.
22

23 83. Before buying the Sportwagen, she read Volkswagen's brochures and
24 researched the Jetta's emission levels along with other characteristics. She relied
25
26
27
28

1 on Volkswagen's statements that the Jetta was a "clean" diesel with low emissions
2 when she decided to buy it.

3
4 84. Now that Volkswagen has admitted it deceived Ms. Asaph and other
5 consumers, and that her diesel emits up to 40 times permissible limits of some
6 pollutants, she is almost ashamed to be driving it.

7
8 85. Ms. Asaph has been harmed in that she paid a premium for a car
9 based on representations about qualities it did not have, and she recognizes that the
10 resale value of her Sportwagen has dropped dramatically.

11
12 **D. Plaintiffs Karen Homman and Matthew Cure**

13 86. Plaintiffs Homann and Cure, husband and wife, are residents of
14 Baltimore, Maryland. In November 2014 they bought a 2015 Golf TDI at a
15 dealership in Laurel, Maryland, the most recent of several Volkswagens the couple
16 has owned.

17
18 87. The low emissions that Volkswagen promised in their clean diesel
19 vehicles, such as the Golf, was a deciding factor for Homann and Cure's decision
20 to purchase a TDI. Other makes and models they considered were hybrid models
21 or other low emission vehicles.

22
23
24 88. The couple was deeply disappointed to learn they are driving a high-
25 polluting car. They have asked Volkswagen if they can return it, or at least use a
26 loaner car until the Golf is repaired, but have been refused.

1 89. They are also concerned that any recall will diminish the emissions
2 and performance characteristics of their Golf, meaning they will have paid a
3 premium for features their car no longer has.
4

5 90. The couple has therefore been harmed by Volkswagen's deception,
6 and they face a concrete risk of additional, future injury.
7

8 **E. Plaintiff Kathryn Eliza Walsh**

9 91. Plaintiff Liza Walsh is a resident and citizen of Meggett, South
10 Carolina, where she purchased a new 2014 Jetta Wagon TDI from a Volkswagen
11 dealership in 2014.
12

13 92. Ms. Walsh paid \$28,900 for her diesel Jetta, which represented a
14 significant price premium over the gasoline model.
15

16 93. Ms. Walsh chose the diesel Jetta Wagon because Volkswagen
17 advertised the vehicle as "CleanDiesel," offering efficient fuel economy and
18 environmentally friendly emissions combined with excellent performance.
19

20 94. Ms. Walsh would never have purchased the car in the first place if she
21 knew the truth about its emission levels, and is disappointed that she bought a car
22 that Defendants represented to her pollutes far less than it actually does. She is
23 concerned that any fix Defendants implements will diminish performance and fuel
24 economy. She would not have bought the car if it did not offer the combination of
25 performance, fuel economy, and clean emissions that Defendants advertised.
26
27
28

F. Plaintiff Rachel Otto

95. Plaintiff Rachel Otto, a resident of Salt Lake City, Utah, purchased a new 2015 Golf Sportwagen TDI in July 2015 from VW SouthTowne in South Jordan, Utah.

96. Ms. Otto is a longtime advocate for clean air in Utah, and is painfully aware of the fact that the Salt Lake Valley has among the worst air quality in the nation. When she got a job that required her to commute by car, she did extensive research, and settled on the 2015 Golf Sportwagen TDI expressly because of Volkswagen's perceived and advertised environmentally-friendly record and the promise of "CleanDiesel." Defendants advertised the Golf Sportwagen TDI as offering clean, environmentally-friendly emissions and excellent fuel mileage.

97. Ms. Otto is outraged, and notes that numerous people in the Salt Lake Valley, like her, drive Volkswagen "CleanDiesel" vehicles because they care about the air quality in the area and were duped by Volkswagen's misrepresentation that the Defeat Device Vehicles were EPA-compliant and environmentally friendly.

98. Now that she has learned the truth about Volkswagen's use of a "Defeat Device" and her car's emissions, she no longer wishes to own or drive it—and indeed does not want any of these highly-polluting vehicles to be driven in the Salt Lake Valley, contributing to the area's poor air quality—but is concerned that the resale value has been severely diminished by Volkswagen's conduct. She

1 would never have purchased the car in the first place if she had known the truth
2 about its emissions and was induced to purchase it by Volkswagen's express
3 misrepresentations that these "CleanDiesel" vehicles were clean and
4 environmentally friendly, when in fact they were polluting at up to 40 times the
5 allowable levels.
6

7
8 **G. Plaintiff Duane Inoue**

9 99. Plaintiff Mr. Inoue is a resident of Mililani, Hawaii.

10 100. Mr. Inoue was interested in buying a diesel car because he cares about
11 the environmental impact of his vehicle. In addition, Mr. Inoue was attracted to
12 diesel because of the fuel economy and savings on fuel expenditures he expected to
13 receive as a benefit of buying diesel.
14

15 101. Furthermore, Mr. Inoue purchased a diesel car because he believed,
16 based on his research, that the engine would have greater longevity than a standard
17 gasoline car.
18

19 102. Mr. Inoue purchased his 2010 Audi A3 TDI on 20 March 2010 from a
20 dealership in Hawaii named Audi Hawaii, a division of JN Automotive Group.
21 Mr. Inoue was told by Mr. Daryl Tokunaga, sales representative for JN
22 Automotive Group, that the TDI engine was friendly to the environment and it
23 provides better fuel mileage than gasoline. Mr. Inoue notes that Audi's 2010
24 brochure for the Audi A3 TDI, which he read in 2010 and still has in his
25
26
27
28

1 possession, states that “TDI emissions are reduced to ultra-low levels thanks to a
2 revolutionary emissions system. The result is a car that is clean, quiet, powerful
3 and proven.” The same brochure showed a graph that “TDI produces 25% fewer
4 CO2 emissions than gasoline; TDI give 20% more range than gasoline; TDI
5 consumes 30% less fuel than gasoline.”
6

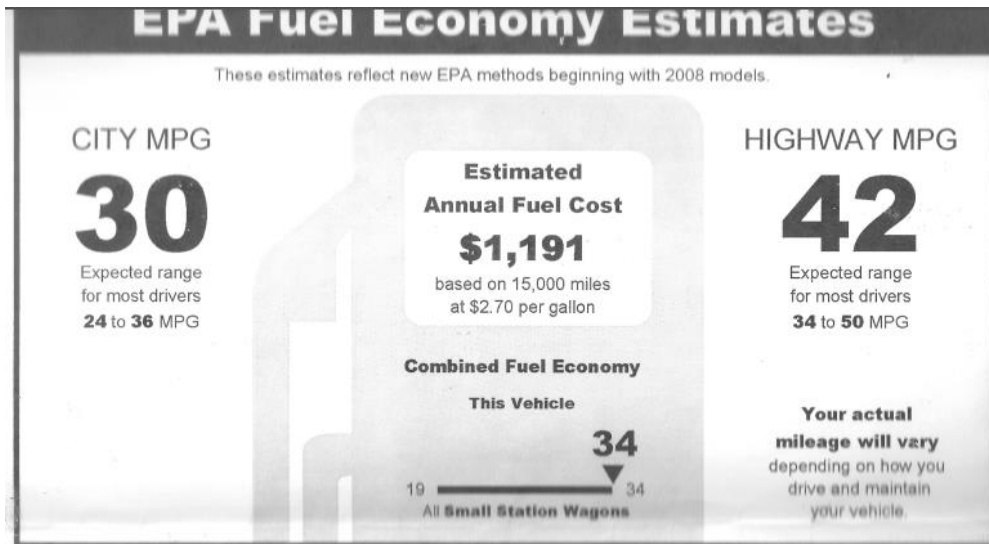
7
8 103. Over the time Mr. Inoue has owned his Audi A3 TDI, he has noticed
9 that the fuel economy was worse than represented. Instead of getting
10 approximately 45 miles per gallon as Volkswagen represented, he only gets about
11 35 miles per gallon, and most of his driving is done on the highway when mileage
12 should be best.
13

14
15 104. Mr. Inoue is disappointed that he paid a premium for a car that
16 pollutes at unlawful levels, and that lacks the performance characteristics,
17 including engine longevity that Volkswagen represented to him.
18

19 **H. Plaintiff Laura Ray**

20 105. Plaintiff Laura Ray, a resident of Sewanee, Tennessee, purchased a
21 2010 Volkswagen Jetta Sportwagen with her husband Richard Ray on September
22 30, 2014 from Cannon Motors, in Lilburn, Georgia. She paid approximately
23 \$17,949.
24

25 106. The Jetta Sportwagen she purchased included the following
26 environmental information on a window decal:
27
28



107. Ms. Ray tries to be environmentally friendly and purchased the Jetta Sportswagen in part because it was marketed as a “CleanDiesel,” offering fuel economy and environmentally friendly emissions combined with excellent performance.

108. Ms. Ray is concerned about the value of her vehicle and whether removing the offending software will reduce the fuel economy and performance that Defendants touted as qualities of the Jetta Sportswagen. Further, as mandatory EPA emissions testing is required in several Tennessee counties, including neighboring Hamilton County, Tennessee, she is concerned that she will be unable to legally register or operate her vehicle should emissions testing be extended to Marion County, Tennessee or if she and her husband change residence to an county in Tennessee where EPA emissions testing is required.

I. Plaintiff Robert Perryman

109. Plaintiff Robert Perryman, a resident of Stigler, Oklahoma, bought a new 2015 Passat TDI SEL at a dealership in Tulsa, Oklahoma in May 2015.

110. Mr. Perryman decided to buy the Passat based on Volkswagen's representations that the vehicle was “clean” and efficient.

111. Mr. Perryman paid a premium for that mix of characteristics, which as it turns out was based on deception. He believes any recall repair will necessarily diminish his Passat’s performance, even if it corrects the unlawful emissions. He intended to eventually resell the Passat, and that resale value has now been reduced due to Volkswagen’s deception.

112. At some point in the next several years, Mr. Perryman was planning to resell or trade in his Passat, and he is devastated that not only is his vehicle harmful to the environment, but it also plummeted in resale value.

J. Plaintiff Cynthia Kirtland

113. Plaintiff Cynthia Kirtland, a resident of Red Hook, New York, purchased a new 2014 Volkswagen Jetta TDI in September 2013 from a dealership in Kingston, New York. She paid \$36,406.

114. Ms. Kirtland chose the Jetta TDI because Defendants advertised it as environmentally friendly and EPA-compliant. She wanted a “zippy,” high-performing car that also offered good fuel mileage and environmentally friendly

1 emissions, and Volkswagen's advertised "CleanDiesel" TDI engines fit the bill.
2 She paid a premium for the Jetta TDI over other vehicles, such as the gasoline TDI,
3 because it offered these features.
4

5 115. Until she learned of Volkswagen's deception, Ms. Kirtland intended
6 to keep and drive the car for as long as ten years. For this reason, she paid upfront
7 for a long-term maintenance plan. In her eyes, the car is still virtually brand new,
8 and she still owes much of the portion of the purchase price that she financed. As a
9 result of Volkswagen's conduct, however, she believes that the value of the car has
10 been severely diminished, and is afraid that she now owes considerably more than
11 the car is worth.
12

13
14 116. Ms. Kirtland has been damaged by Volkswagen's fraudulent and
15 deceptive conduct. She would not have purchased her Jetta TDI if she knew the
16 truth about its emissions; nor would she have paid a premium for it.
17

18 **K. Plaintiffs William Harlan and Emily Diznoff**
19

20 117. Mr. Harlan and Dr. Diznoff have purchased two Volkswagen Jetta
21 TDI vehicles, one in 2011, and another in 2014. They bought their Jetta TDIs at
22 the Harmony Motors dealership in Asheville, North Carolina specifically because
23 of Volkswagen's claims of cleaner emissions and the cars' green, environmentally-
24 friendly reputation, which Volkswagen established in its marketing materials.
25
26
27
28

1 118. Mr. Harlan and Dr. Diznoff were very intentional about their selection
2 of vehicles. After carefully studying their options, including the Toyota Prius, they
3 decided that driving a clean diesel from Volkswagen was the cleanest, most
4 environmentally responsible way to get where they needed to travel in their
5 mountainous area.
6

7
8 119. As noted in a recent article in the Asheville newspaper the Citizen-
9 Times, Mr. Harlan and Dr. Diznoff are serious about the environment and are
10 committed to living a healthy life in the outdoors.
11

12 120. Dr. Diznoff, a family practice physician, is an important community
13 health advocate in the region. For several years, she has celebrated the clean, green
14 benefits of driving a Volkswagen Jetta clean diesel vehicle. Now she must
15 apologize to her patients for boosting Volkswagen's profits by advocating this
16 deceptive, dangerous, and dirty diesel vehicle that is harming people's health.
17

18 121. Mr. Harlan is the five-time champion of the 40-mile Mount Mitchell
19 Challenge. In addition, he is the longtime editor-in-chief of the Blue Ridge
20 Outdoors magazine, one of the country's premier magazines about the outdoors.
21 He is expected to uphold the highest environmental standards in his personal and
22 professional life. He even touted Volkswagen's clean diesel technology in a feature
23 story. Having benefited Volkswagen through his promotion of their cars, he is now
24
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1 in the unfortunate position of having to retract his statements and apologize for the
2 vehicle he drives to various environmental meetings and events.

3
4 122. Volkswagen's deception and fraud have damaged the couple both
5 personally and professionally.

6
7 123. Now that they know the truth about their Jetta TDI vehicles, Mr.
8 Harlan and Dr. Diznoff feel like frauds themselves. They are embarrassed to be
9 seen driving their vehicles publicly, and the resale value of their two Jetta TDIs is a
10 shadow of what it was before September 18, 2015.

11
12 124. Mr. Harlan and Dr. Diznoff are outraged to have enriched
13 Volkswagen, both financially and through their own professional endorsements,
14 when Volkswagen knew all along that it was cashing in on its customers' good
15 consciences.
16

17 **VII. CLASS ACTION ALLEGATIONS**

18 125. Plaintiffs bring this action on behalf of themselves and as a class
19 action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal
20 Rules of Civil Procedure on behalf of the following Class:
21

22 All persons or entities in the United States who are current or former
23 owners and/or lessees of a diesel "Defeat Device Vehicle." Defeat
24 Device Vehicles include, without limitation: Model Year ("MY")
25 2009-2015 Jetta, MY 2009-2014 Jetta Sportwagen, MY 2012-2015
26 Beetle and Beetle Convertible, MY 2010-2015 Golf, MY 2015 Golf
27 Sportwagen, MY 2012-2015 Passat, and MY 2010-2015 Audi A3.
28

1 126. Excluded from the Class are individuals who have personal injury
2 claims resulting from the “defeat device” in the CleanDiesel system. Also excluded
3 from the Class are Volkswagen and its subsidiaries and affiliates; all persons who
4 make a timely election to be excluded from the Class; governmental entities; and
5 the judge to whom this case is assigned and his/her immediate family. Plaintiffs
6 reserve the right to revise the Class definition based upon information learned
7 through discovery.
8

9
10 127. Certification of Plaintiffs’ claims for class-wide treatment is
11 appropriate because Plaintiffs can prove the elements of their claims on a class-
12 wide basis using the same evidence as would be used to prove those elements in
13 individual actions alleging the same claim.
14

15
16 128. This action has been brought and may be properly maintained on
17 behalf of the Class proposed herein under Federal Rule of Civil Procedure 23.
18

19 **1. Numerosity: Federal Rule of Civil Procedure 23(a)(1).**

20 129. The members of the Class are so numerous and geographically
21 dispersed that individual joinder of all Class members is impracticable. While
22 Plaintiffs are informed and believe that there are not less than hundreds of
23 thousands of members of the Class, the precise number of Class members is
24 unknown to Plaintiffs, but may be ascertained from Volkswagen’s records. Class
25 members may be notified of the pendency of this action by recognized, Court-
26
27
28

1 approved notice dissemination methods, which may include U.S. mail, electronic
2 mail, Internet postings, and/or published notice.

3
4 **2. Commonality and Predominance: Federal Rule of Civil**
5 **Procedure 23(a)(2) and 23(b)(3).**

6 130. This action involves common questions of law and fact, which
7 predominate over any questions affecting individual Class members, including,
8 without limitation:

9 (a) Whether Volkswagen engaged in the conduct alleged herein;

10 (b) Whether Volkswagen designed, advertised, marketed, distributed,
11 leased, sold, or otherwise placed Defeat Device Vehicles into the stream of
12 commerce in the United States;

13 (c) Whether the CleanDiesel engine system in the Defeat Device Vehicles
14 contains a defect in that it does not comply with EPA requirements;

15 (d) Whether the CleanDiesel engine systems in Defeat Device Vehicles
16 can be made to comply with EPA standards without substantially degrading the
17 performance and/or efficiency of the Defeat Device Vehicles;

18 (e) Whether Volkswagen knew about the “defeat device” and, if so, how
19 long Volkswagen has known;

20 (f) Whether Volkswagen designed, manufactured, marketed, and
21 distributed Defeat Device Vehicles with a “defeat device,”
22
23
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1 (g) Whether Volkswagen's conduct violates consumer protection statutes,
2 warranty laws, and other laws as asserted herein;

3
4 (h) Whether Plaintiffs and the other Class members overpaid for their
5 Defeat Device Vehicles;

6 (i) Whether Plaintiffs and the other Class members are entitled to
7 equitable relief, including, but not limited to, restitution or injunctive relief; and

8
9 (j) Whether Plaintiffs and the other Class members are entitled to
10 damages and other monetary relief and, if so, in what amount.

11
12 **3. Typicality: Federal Rule of Civil Procedure 23(a)(3).**

13 131. Plaintiffs' claims are typical of the other Class members' claims
14 because, among other things, all Class members were comparably injured through
15 Volkswagen's wrongful conduct as described above.

16
17 **4. Adequacy: Federal Rule of Civil Procedure 23(a)(4).**

18 132. Plaintiffs are adequate Class representatives because their interests do
19 not conflict with the interests of the other members of the Class they seek to
20 represent; Plaintiffs have retained counsel competent and experienced in complex
21 class action litigation; and Plaintiffs intend to prosecute this action vigorously. The
22 Class's interests will be fairly and adequately protected by Plaintiffs and their
23 counsel.
24
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1 **5. Declaratory and Injunctive Relief: Federal Rule of Civil**
2 **Procedure 23(b)(2).**

3 133. Volkswagen has acted or refused to act on grounds generally
4 applicable to Plaintiffs and the other members of the Class, thereby making
5 appropriate final injunctive relief and declaratory relief, as described below, with
6 respect to the Class as a whole.
7

8 **6. Superiority: Federal Rule of Civil Procedure 23(b)(3).**

9 134. A class action is superior to any other available means for the fair and
10 efficient adjudication of this controversy, and no unusual difficulties are likely to
11 be encountered in the management of this class action. The damages or other
12 financial detriment suffered by Plaintiffs and the other Class members are
13 relatively small compared to the burden and expense that would be required to
14 individually litigate their claims against Volkswagen, so it would be impracticable
15 for members of the Class to individually seek redress for Volkswagen's wrongful
16 conduct.
17

18 135. Even if Class members could afford individual litigation, the court
19 system could not. Individualized litigation creates a potential for inconsistent or
20 contradictory judgments, and increases the delay and expense to all parties and the
21 court system. By contrast, the class action device presents far fewer management
22 difficulties, and provides the benefits of single adjudication, economy of scale, and
23 comprehensive supervision by a single court.
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VIII. ANY APPLICABLE STATUTES OF LIMITATION ARE TOLLED

A. Discovery Rule Tolling

136. The tolling doctrine was made for cases of concealment like this one. For the following reasons, any otherwise-applicable statutes of limitation have been tolled by the discovery rule with respect to all claims.

137. Through the exercise of reasonable diligence, and within any applicable statutes of limitation, Plaintiffs and members of the proposed Class could not have discovered that Volkswagen was concealing and misrepresenting the true emissions levels of its vehicles, including but not limited to its use of defeat devices.

138. As reported in *The New York Times* on September 19, 2015, the International Council on Clean Transportation, a research group, first noticed the difference between Volkswagen's emissions in testing laboratories and in normal use on the road. The International Council on Clean Transportation brought the defeat device issue to the attention of the EPA. The EPA, in turn, conducted further tests on the vehicles, and ultimately uncovered the unlawful use of the defeat device software. Thus, Volkswagen's deception with respect to its CleanDiesel engines, engine control systems, and "defeat devices" was painstakingly concealed from consumers and regulators alike.

1 139. Plaintiffs and the other Class members could not reasonably discover,
2 and did not know of facts that would have caused a reasonable person to suspect,
3 that Volkswagen intentionally failed to report information within its knowledge to
4 federal and state authorities, its dealerships, or consumers.
5

6 140. Likewise, a reasonable and diligent investigation could not have
7 disclosed that Volkswagen had information in its sole possession about the
8 existence of its sophisticated emissions deception and that it concealed that
9 information, which was discovered by Plaintiffs immediately before this action
10 was filed. Plaintiffs and other Class members could not have previously learned
11 that Volkswagen valued profits over compliance with applicable federal and state
12 emissions and consumer law.
13
14
15

16 **B. Tolling Due To Fraudulent Concealment**

17 141. Throughout the relevant time period, all applicable statutes of
18 limitation have been tolled by Volkswagen's knowing and active fraudulent
19 concealment and denial of the facts alleged in this Complaint.
20

21 142. Instead of disclosing its emissions deception, or that the emissions
22 from the Defeat Device Vehicles were far worse than represented, Volkswagen
23 falsely represented that its vehicles complied with federal and state emissions
24 standards, and that it was a reputable manufacturer whose representations could be
25 trusted.
26
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28

1 **C. Estoppel**

2 143. Volkswagen was under a continuous duty to disclose to Plaintiffs and
3 the other Class members the facts that it knew about the emissions from Defeat
4 Device Vehicles, and of those vehicles' failure to comply with federal and state
5 laws.
6

7
8 144. Although it had the duty throughout the relevant period to disclose to
9 Plaintiffs and Class members that it had engaged in the deception described in this
10 Complaint, Volkswagen chose to evade federal and state emissions and clean air
11 standards with respect to the Defeat Device Vehicles, and it intentionally
12 misrepresented its blatant and deceptive lack of compliance with state law
13 regulating vehicle emissions and clean air.
14

15
16 145. Thus, Volkswagen is estopped from relying on any statutes of
17 limitations in defense of this action.

18 **IX. CAUSES OF ACTION**

19 **A. Claims Asserted on Behalf of the Class**

20 **COUNT I**
21 **FRAUD BY CONCEALMENT**
22 **(Common Law)**

23 146. Plaintiffs reallege and incorporate by reference all paragraphs as
24 though fully set forth herein.
25

26 147. Plaintiffs bring this claim on behalf of the Class.
27
28

1 148. Volkswagen intentionally concealed and suppressed material facts
2 concerning the quality and character of the Defeat Device Vehicles. As alleged in
3 this Complaint, Volkswagen engaged in deception to evade federal and state
4 vehicle emissions standards by installing software designed to conceal its vehicles'
5 emissions of the pollutants, which contributes to the creation of ozone and smog.
6

7
8 149. The software installed on the vehicles at issue was designed
9 nefariously to kick in during emissions certification testing, such that the vehicles
10 would show far lower emissions than when actually operating on the road. The
11 result was what Volkswagen's intended: vehicles passed emissions certifications
12 by way of deliberately induced readings that do not reflect normal operations.
13
14 Reportedly, Volkswagen's deliberate, secret deception resulted in noxious
15 emissions from these vehicles at up to 40 times applicable standards.
16

17 150. Plaintiffs and Class members reasonably relied upon Volkswagen's
18 false representations. They had no way of knowing that Volkswagen's
19 representations were false and gravely misleading. As alleged herein, Volkswagen
20 employed extremely sophisticated methods of deception. Plaintiffs and Class
21 members did not, and could not, unravel Volkswagen's deception on their own.
22
23

24 151. Volkswagen concealed and suppressed material facts concerning what
25 is evidently the true culture of Volkswagen—one characterized by an emphasis on
26 profits and sales above compliance with federal and state clean air law, and
27
28

emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales above the trust that Plaintiffs and Class members placed in its representations.

152. As one representative customer, Kathy Muscato of Rochester, New York, explained in a tweet the day the EPA announced the Notice of Violation, she felt “betrayed” by Volkswagen:



Kathy Muscato @kathymuscato · Sep 18

Why we don't trust brands, people. I bought my diesel Volkswagen Jetta expressly for its clean performance. Feel betrayed.



1



1



153. And a tweet from another representative customer from North Carolina, Associate Professor Joe DeCarolis, stated he’d been “swindled”:



154. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its deception to regulators or consumers, including Plaintiffs and Class members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including certified previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air law and

1 emissions regulations, and that its vehicles likewise comply with applicable laws
2 and regulations.
3



21 155. Volkswagen's false representations were material to consumers, both
22 because they concerned the quality of the Defeat Device Vehicles, including their
23 compliance with applicable federal and state laws and regulations regarding clean
24 air and emissions, and also because the representations played a significant role in
25 the value of the vehicles. As Volkswagen well knew, its customers, including
26
27
28

1 Plaintiffs and Class members, highly valued that the vehicles they were purchasing
2 or leasing were clean diesel cars, and they paid accordingly.
3

4 156. Volkswagen had a duty to disclose the emissions deception it engaged
5 in with respect to the vehicles at issue because knowledge of the deception and its
6 details were known and/or accessible only to Volkswagen, because Volkswagen
7 had exclusive knowledge as to implementation and maintenance of its deception,
8 and because Volkswagen knew the facts were unknown to or reasonably
9 discoverable by Plaintiffs or Class members.
10
11

12 157. Volkswagen also had a duty to disclose because it made general
13 affirmative representations about the qualities of its vehicles with respect to
14 emissions standards, starting with references to them as clean diesel cars, or cars
15 with clean diesel engines, which were misleading, deceptive, and incomplete
16 without the disclosure of the additional facts set forth above regarding its
17 emissions deception, the actual emissions of its vehicles, its actual philosophy with
18 respect to compliance with federal and state clean air law and emissions
19 regulations, and its actual practices with respect to the vehicles at issue.
20
21

22 158. Having volunteered to provide information to Plaintiffs and the Class,
23 Volkswagen had the duty to disclose the entire truth. These omitted and concealed
24 facts were material because they directly affect the value of the Defeat Device
25 Vehicles purchased or leased by Plaintiffs and Class members. Whether a
26
27
28

1 manufacturer's products comply with federal and state clean air law and emissions
2 regulations, and whether that manufacturer tells the truth with respect to such
3 compliance or non-compliance, are material concerns to a consumer, including
4 with respect to the emissions certifications testing their vehicles must pass.
5

6 Volkswagen represented to Plaintiffs and Class members that they were purchasing
7 clean diesel vehicles, and certification testing appeared to confirm this—except
8 that, secretly, Volkswagen had thoroughly subverted the testing process.
9

10 159. Volkswagen actively concealed and/or suppressed these material
11 facts, in whole or in part, to pad and protect its profits and to avoid the perception
12 that its vehicles did not or could not comply with federal and state laws governing
13 clean air and emissions, which perception would hurt the brand's image and cost
14 Volkswagen money, and it did so at the expense of Plaintiffs and Class members.
15
16

17 160. On information and belief, Volkswagen has still not made full and
18 adequate disclosures, and continues to defraud Plaintiffs and Class members by
19 concealing material information regarding both the emissions qualities of its
20 vehicles and its emissions deception.
21

22 161. Plaintiffs and Class members were unaware of the omitted material
23 facts referenced herein, and they would not have acted as they did if they had
24 known of the concealed and/or suppressed facts, in that they would not have
25 purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or
26
27
28

1 would not have continued to drive their heavily polluting vehicles, or would have
2 taken other affirmative steps in light of the information concealed from them.

3
4 Plaintiffs' and Class members' actions were justified. Volkswagen was in
5 exclusive control of the material facts, and such facts were not known to the
6 public, Plaintiffs, or Class members.
7

8 162. Because of the concealment and/or suppression of the facts, Plaintiffs
9 and Class members have sustained damages because they own vehicles that are
10 diminished in value as a result of Volkswagen's concealment of the true quality
11 and quantity of those vehicles' emissions and Volkswagen's failure to timely
12 disclose the actual emissions qualities and quantities of hundreds of thousands of
13 Volkswagen- and Audi-branded vehicles and the serious issues engendered by
14 Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of
15 Volkswagen's emissions deceptions with regard to the vehicles at issue, and the
16 company's callous disregard for compliance with applicable federal and state law
17 and regulations, Plaintiffs and Class members who purchased or leased new or
18 certified previously owned vehicles would have paid less for their vehicles or
19 would not have purchased or leased them at all.
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24 163. The value of Plaintiffs' and Class members' vehicles has diminished
25 as a result of Volkswagen's fraudulent concealment of its emissions deception,
26 which has greatly tarnished the Volkswagen and Audi brand names attached to
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1 Plaintiffs' and Class members' vehicles and made any reasonable consumer
2 reluctant to purchase any of the Defeat Device Vehicles, let alone pay what
3 otherwise would have been fair market value for the vehicles.
4

5 164. Accordingly, Volkswagen is liable to Plaintiffs and Class members for
6 damages in an amount to be proven at trial.
7

8 165. Volkswagen's acts were done wantonly, maliciously, oppressively,
9 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and
10 Class members' rights and the representations that Volkswagen made to them, in
11 order to enrich Volkswagen. Volkswagen's conduct warrants an assessment of
12 punitive damages in an amount sufficient to deter such conduct in the future, which
13 amount is to be determined according to proof.
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15

16 166. Plaintiffs plead this count pursuant to the law of Virginia, where
17 Volkswagen has its American headquarters, on behalf of all members of the Class.
18 As necessary, and in the alternative, Plaintiffs may allege sub-classes, based on the
19 residences at pertinent times of members of the Class, to allege fraudulent
20 concealment under the laws of states other than Virginia.
21

22 **COUNT II**
23 **BREACH OF CONTRACT**

24 167. Plaintiffs incorporate by reference all preceding allegations as though
25 fully set forth herein.
26

27 168. Plaintiffs bring this Count on behalf of the Class.
28

1 169. Volkswagen’s misrepresentations and omissions alleged herein,
2 including Volkswagen’s failure to disclose the existence of the “defeat device”
3 and/or defective design as alleged herein, caused Plaintiffs and the other Class
4 members to make their purchases or leases of their Defeat Device Vehicles. Absent
5 those misrepresentations and omissions, Plaintiffs and the other Class members
6 would not have purchased or leased these Defeat Device Vehicles, would not have
7 purchased or leased these Defeat Device Vehicles at the prices they paid, and/or
8 would have purchased or leased less expensive alternative vehicles that did not
9 contain the CleanDiesel engine system and the “defeat device.” Accordingly,
10 Plaintiffs and the other Class members overpaid for their Defeat Device Vehicles
11 and did not receive the benefit of their bargain.

12 170. Each and every sale or lease of a Defeat Device Vehicle constitutes a
13 contract between Volkswagen and the purchaser or lessee. Volkswagen breached
14 these contracts by selling or leasing Plaintiffs and the other Class members
15 defective Defeat Device Vehicles and by misrepresenting or failing to disclose the
16 existence of the “defeat device” and/or defective design, including information
17 known to Volkswagen rendering each Defeat Device Vehicle less safe and
18 emissions compliant, and thus less valuable, than vehicles not equipped with
19 CleanDiesel engine systems and “defeat devices.”
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171. As a direct and proximate result of Volkswagen's breach of contract, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III
VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW
(Cal. Bus. & Prof. Cod §§ 17200, *et seq.*)

172. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

173. Plaintiffs bring this Count on behalf of the Class.

174. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

175. Volkswagen's conduct, as described herein, was and is in violation of the UCL. Volkswagen's conduct violates the UCL in at least the following ways:

(a) By knowingly and intentionally concealing from Plaintiffs and the other Class members that the Defeat Device Vehicles suffer from a design defect while obtaining money from Plaintiffs and the Class;

(b) By marketing Defeat Device Vehicles as possessing functional and defect-free, EPA compliant CleanDiesel engine systems;

1 (c) By purposefully installing an illegal “defeat device” in the Defeat
2 Device Vehicles to fraudulently obtain EPA and CARB certification and cause
3 Defeat Device Vehicles to pass emissions tests when in truth and fact they did not
4 pass such tests;

5
6 (d) By violating federal laws, including the Clean Air Act; and

7
8 (e) By violating other California laws, including California laws
9 governing vehicle emissions and emission testing requirements.

10 176. Volkswagen’s misrepresentations and omissions alleged herein caused
11 Plaintiffs and the other Class members to make their purchases or leases of their
12 Defeat Device Vehicles. Absent those misrepresentations and omissions, Plaintiffs
13 and the other Class members would not have purchased or leased these Defeat
14 Device Vehicles at the prices they paid, and/or would have purchased or leased
15 less expensive alternative vehicles that did not contain CleanDiesel engine systems
16 that failed to comply with EPA and California emissions standards.

17
18 177. Accordingly, Plaintiffs and the other Class members have suffered
19 injury in fact including lost money or property as a result of Volkswagen’s
20 misrepresentations and omissions.

21
22 178. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent
23 acts or practices by Volkswagen under Cal. Bus. & Prof. Code § 17200.

179. Plaintiffs request that this Court enter such orders or judgments as may be necessary to enjoin Volkswagen from continuing its unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and members of the Class any money it acquired by unfair competition, including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345; and for such other relief set forth below.

180. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully restated here.

182. Defendant made numerous representations, descriptions, and promises to Plaintiffs and Class members regarding the performance and emission controls of its diesel vehicles.

184. Volkswagen made similar representations that its emission systems required with state law, for example:

Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. (Volkswagen), warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2010** Volkswagen vehicle imported by Volkswagen and certified for sale and registered in California:

- was designed, built and equipped so as to conform with all applicable requirements of the California Air Resources Board ("CARB") and

185. Defendant, however, knew or should have known that its representations, descriptions, and promises were false. Defendant was aware that it had installed defeat devices in the vehicles it sold to Plaintiffs and Class members.

186. Plaintiffs and Class members reasonably relied on Volkswagen's representations in purchasing "clean" diesel vehicles. Those vehicles, however, did not perform as was warranted. Unbeknownst to Plaintiffs, those vehicles included devices that caused their emission reduction systems to perform at levels worse than advertised. Those devices are defects. Accordingly, Volkswagen breached its express warranty by providing a product containing defects that were never disclosed to the Plaintiffs and Class members.

1 187. As a direct and proximate result of Volkswagen's false and
2 misleading representations and warranties, Plaintiffs and Class members suffered
3 significant damages and seek the relief described below.
4

5 **COUNT V**
6 **BREACH OF IMPLIED WARRANTY**

7 188. Plaintiffs incorporate by reference each and every prior and
8 subsequent allegation of this Complaint as if fully restated here.
9

10 189. Plaintiffs bring this cause of action against Volkswagen for breach of
11 implied warranty on behalf of themselves and the Class.

12 190. Volkswagen made numerous representations, descriptions, and
13 promises to Plaintiffs and Class members regarding the functionality of
14 Volkswagen's "clean" diesel technology.
15

16 191. Plaintiffs and Class members reasonably relied on Volkswagen's
17 representations in purchasing the Defeat Device vehicles.
18

19 192. As set forth throughout this Complaint, Volkswagen knew that its
20 representations, descriptions and promises regarding its diesel engines were false.
21

22 193. When Plaintiffs and Class members purchased Volkswagen's diesel
23 vehicles, they did not conform to the promises or affirmations of fact made in
24 Volkswagen's promotional materials, including that the vehicles were designed to
25 meet the most demanding environmental standards. Instead, as alleged above,
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1 those vehicles were designed to cheat those standards, and the vehicles emitted far
2 higher levels of pollution than promised.

3
4 194. Accordingly, the Defeat Device Vehicles failed to conform to
5 Volkswagen's implied warranty regarding their functionality.

6
7 195. As a direct and proximate result of Volkswagen's false and
8 misleading representations and warranties, Plaintiffs and Class members suffered
9 significant injury when Volkswagen sold them cars that, it is now clear, are worth
10 far less than the price Plaintiffs and Class members paid for them. Accordingly,
11 Plaintiffs and the Class seek the relief described below.

12
13 **COUNT VI**
14 **IMPLIED AND WRITTEN WARRANTY**
15 **Magnuson - Moss Act (15 U.S.C. §§ 2301, *et seq.*)**

16 196. Plaintiffs incorporate by reference each and every prior and
17 subsequent allegation of this Complaint as if fully restated here.

18 197. Plaintiffs assert this cause of action on behalf of themselves and the
19 other members of the Class.

20
21 198. This Court has jurisdiction to decide claims brought under 15 U.S.C. §
22 2301 by virtue of 28 U.S.C. § 2301(3).

23
24 199. Volkswagen's Defeat Device Vehicles are a "consumer product," as
25 that term is defined in 15 U.S.C. § 2301(1).

1 200. Plaintiffs and Class members are “consumers,” as that term is defined
2 in 15 U.S.C. § 2301(3).

3
4 201. Volkswagen is a “warrantor” and “supplier” as those terms are
5 defined in 15 U.S.C. § 2301(4) and (5).

6 202. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer
7 who is damaged by the failure of a warrantor to comply with an implied or written
8 warranty.

9
10 203. As described herein, Volkswagen provided Plaintiffs and Class
11 members with “implied warranties” and “written warranties” as those term are
12 defined in 15 U.S.C. § 2301.

13
14 204. Volkswagen has breached these warranties as described in more detail
15 above. Without limitation, Volkswagen’s Defeat Device vehicles are defective, as
16 described above, which resulted in the problems and failures also described above.

17
18 205. By Volkswagen’s conduct as described herein, including
19 Volkswagen’s knowledge of the defects inherent in the vehicles and its action, and
20 inaction, in the face of the knowledge, Volkswagen has failed to comply with its
21 obligations under its written and implied promises, warranties, and representations.

22
23 206. In its capacity as a warrantor, and by the conduct described herein,
24 any attempts by Volkswagen to limit the implied warranties in a manner that would
25 exclude coverage of the defective software and systems is unconscionable and any
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1 such effort to disclaim, or otherwise limit, liability for the defective the software
2 and supporting systems is null and void.

3
4 207. All jurisdictional prerequisites have been satisfied.

5 208. Plaintiffs and members of the Class are in privity with Volkswagen in
6 that they purchased the software from Volkswagen or its agents.

7
8 209. As a result of Volkswagen's breach of warranties, Plaintiffs and Class
9 members are entitled to revoke their acceptance of the vehicles, obtain damages
10 and equitable relief, and obtain costs pursuant to 15 U.S.C. §2310.

11
12 **COUNT VII**
13 **UNJUST ENRICHMENT**

14 210. Plaintiffs incorporate by reference each and every prior and
15 subsequent allegation of this Complaint as if fully restated here.

16 211. Plaintiffs bring this count on behalf of themselves and, where
17 applicable, the Class.

18
19 212. Plaintiffs and members of the Class conferred a benefit on Defendants
20 by, inter alia, using (and paying for) its vehicles.

21
22 213. Defendants has retained this benefit, and know of and appreciate this
23 benefit.

24 214. Defendants was and continues to be unjustly enriched at the expense
25 of Plaintiffs and Class members.

26
27 215. Defendants should be required to disgorge this unjust enrichment.
28

B. State-Specific Claims

**COUNT VIII
VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT
(Cal. Civ. Code §§ 1750, *et seq.*)**

216. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

217. Plaintiffs bring this Count on behalf of California members of the Class.

218. California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*, proscribes "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer."

219. The Defeat Device Vehicles are "goods" as defined in Cal. Civ. Code § 1761(a).

220. Plaintiffs and the other California members of the Class are "consumers" as defined in Cal. Civ. Code § 1761(d), and Plaintiffs, the other California members of the Class, and Volkswagen are "persons" as defined in Cal. Civ. Code § 1761(c).

221. As alleged above, Volkswagen made numerous representations concerning the benefits, efficiency, performance and safety features of CleanDiesel engine systems that were misleading.

1 222. In purchasing or leasing the Defeat Device Vehicles, Plaintiffs and the
2 other Class members were deceived by Volkswagen's failure to disclose that the
3 Defeat Device Vehicles were equipped with defective CleanDiesel engine systems
4 that failed EPA and California emissions standards.
5

6 223. Volkswagen's conduct, as described hereinabove, was and is in
7 violation of the CLRA. Volkswagen's conduct violates at least the following
8 enumerated CLRA provisions:
9

10 (a) Cal. Civ. Code § 1770(a)(5): Representing that goods have
11 characteristics, uses, and benefits which they do not have;
12

13 (b) Cal. Civ. Code § 1770(a)(7): Representing that goods are of a
14 particular standard, quality, or grade, if they are of another;
15

16 (c) Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell
17 them as advertised; and
18

19 (d) Cal. Civ. Code § 1770(a)(16): Representing that goods have been
20 supplied in accordance with a previous representation when they have not.
21

22 224. Plaintiffs and the other California members of the Class have suffered
23 injury in fact and actual damages resulting from Volkswagen's material omissions
24 and misrepresentations because they paid an inflated purchase or lease price for the
25 Defeat Device Vehicles and because they stand to pay additional fuel costs if and
26 when their Defeat Device Vehicles are made to comply with emissions standards.
27
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1 225. Volkswagen knew, should have known, or was reckless in not
2 knowing of the defective design and/or manufacture of the CleanDiesel engine
3 systems, and that the Defeat Device Vehicles were not suitable for their intended
4 use.
5

6 226. The facts concealed and omitted by Volkswagen to Plaintiffs and the
7 other California members of the Class are material in that a reasonable consumer
8 would have considered them to be important in deciding whether to purchase or
9 lease the Defeat Device Vehicles or pay a lower price. Had Plaintiffs and the other
10 California members of the Class known about the defective nature of the Defeat
11 Device Vehicles, they would not have purchased or leased the Defeat Device
12 Vehicles or would not have paid the prices they paid.
13
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16 227. Plaintiffs' and the other California members of the Class' injuries
17 were proximately caused by Volkswagen's fraudulent and deceptive business
18 practices.
19

20 **COUNT IX**
21 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**
22 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

23 228. Plaintiffs incorporate by reference all preceding allegations as though
24 fully set forth herein.

25 229. Plaintiffs bring this Count on behalf of the California members of the
26 Class.
27
28

1 230. California Bus. & Prof. Code § 17500 states:

2 It is unlawful for any...corporation...with intent directly or indirectly
3 to dispose of real or personal property...to induce the public to enter
4 into any obligation relating thereto, to make or disseminate or cause to
5 be made or disseminated ... from this state before the public in any
6 state, in any newspaper or other publication, or any advertising
7 device, ... or in any other manner or means whatever, including over
8 the Internet, any statement ... which is untrue or misleading, and
 which is known, or which by the exercise of reasonable care should be
 known, to be untrue or misleading.

9 231. Volkswagen caused to be made or disseminated throughout California
10 and the United States, through advertising, marketing and other publications,
11 statements that were untrue or misleading, and which were known, or which by the
12 exercise of reasonable care should have been known to Volkswagen, to be untrue
13 and misleading to consumers, including Plaintiffs and the other Class members.

14 232. Volkswagen has violated § 17500 because the misrepresentations and
15 omissions regarding the safety, reliability, and functionality of Defeat Device
16 Vehicles as set forth in this Complaint were material and likely to deceive a
17 reasonable consumer.

18 233. Plaintiffs and the other Class members have suffered an injury in fact,
19 including the loss of money or property, as a result of Volkswagen's unfair,
20 unlawful, and/or deceptive practices. In purchasing or leasing their Defeat Device
21 Vehicles, Plaintiffs and the other Class members relied on the misrepresentations
22 and/or omissions of Volkswagen with respect to the safety, performance and
23 and/or omissions of Volkswagen with respect to the safety, performance and
24 and/or omissions of Volkswagen with respect to the safety, performance and
25 and/or omissions of Volkswagen with respect to the safety, performance and
26 and/or omissions of Volkswagen with respect to the safety, performance and
27 and/or omissions of Volkswagen with respect to the safety, performance and
28 and/or omissions of Volkswagen with respect to the safety, performance and

1 reliability of the Defeat Device Vehicles. Volkswagen's representations turned out
2 not to be true because the Defeat Device Vehicles are distributed with faulty and
3 defective CleanDiesel engine systems, rendering certain safety and emissions
4 functions inoperative. Had Plaintiffs and the other Class members known this, they
5 would not have purchased or leased their Defeat Device Vehicles and/or paid as
6 much for them. Accordingly, Plaintiffs and the other Class members overpaid for
7 their Defeat Device Vehicles and did not receive the benefit of their bargain.
8

9
10 234. All of the wrongful conduct alleged herein occurred, and continues to
11 occur, in the conduct of Volkswagen's business. Volkswagen's wrongful conduct
12 is part of a pattern or generalized course of conduct that is still perpetuated and
13 repeated, both in the State of California and nationwide.
14

15
16 235. Plaintiffs, individually and on behalf of the other Class members,
17 request that this Court enter such orders or judgments as may be necessary to
18 enjoin Volkswagen from continuing their unfair, unlawful, and/or deceptive
19 practices and to restore to Plaintiffs and the other Class members any money
20 Volkswagen acquired by unfair competition, including restitution and/or
21 restitutionary disgorgement, and for such other relief set forth below.
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COUNT X
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(Cal. Com. Code § 2314)

236. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

237. Plaintiffs bring this Count on behalf of the California members of the Class.

238. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles under Cal. Com. Code § 2104.

239. A warranty that the Defeat Device Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to Cal. Com. Code § 2314.

240. These Defeat Device Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defeat Device Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

241. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators.

243. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

244. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1 245. This claim is brought on behalf of California members of the Class.

2 246. Volkswagen intentionally concealed and suppressed material facts
3
4 concerning the quality of the Defeat Device Vehicles. As alleged in this complaint,
5 notwithstanding references in the very model names of the subject vehicles as
6 “CleanDiesel,” or to their engines as “TDI CleanDiesel” engines, Volkswagen
7 engaged in a secret deception to evade federal and state vehicle emissions
8 standards by installing software designed to conceal its vehicles’ emissions of the
9 pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The
10 software installed on the vehicles at issue was designed nefariously to kick in
11 during emissions certification testing, such that the vehicles would show far lower
12 emissions than when actually operating on the road. The result was what
13 Volkswagen intended: vehicles passed emissions certifications by way of
14 deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret
15 deception resulted in noxious emissions from these vehicles at up to 40 times
16 applicable standards.

17 247. Plaintiffs and California members of the Class reasonably relied upon
18 Volkswagen’s false representations. They had no way of knowing that
19 Volkswagen’s representations were false and gravely misleading. As alleged
20 herein, Volkswagen employed extremely sophisticated methods of deception.
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1 Plaintiffs and California members of the Class did not, and could not, unravel
2 Volkswagen's deception on their own.

3
4 248. Volkswagen concealed and suppressed material facts concerning what
5 is evidently the true culture of Volkswagen—one characterized by an emphasis on
6 profits and sales above compliance with federal and state clean air law, and
7 emissions regulations that are meant to protect the public and consumers. It also
8 emphasized profits and sales about the trust that Plaintiffs and California members
9 of the Class placed in its representations. As one customer, Priya Shah, put it in a
10 quotation cited by the Los Angeles Times in a September 15, 2015 article, "It's
11 just a blatant disregard and intentional manipulation of the system. That's just a
12 whole other level of not only lying to the government, but also lying to your
13 consumer. People buy diesel cars from Volkswagen because they feel they are
14 clean diesel cars." As Ms. Shah put it, "I don't want to be spewing noxious gases
15 into the environment."

16
17 249. Necessarily, Volkswagen also took steps to ensure that its employees
18 did not reveal the details of its deception to regulators or consumers, including
19 Plaintiffs and California members of the Class. Volkswagen did so in order to
20 boost the reputations of its vehicles and to falsely assure purchasers and lessors of
21 its vehicles, including certified previously owned vehicles, that Volkswagen is a
22 reputable manufacturer that complies with applicable law, including federal and
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1 state clean air law and emissions regulations, and that its vehicles likewise comply
2 with applicable law and regulations. Volkswagen's false representations were
3 material to consumers, both because they concerned the quality of the Defeat
4 Device Vehicles, including their compliance with applicable federal and state law
5 and regulations regarding clean air and emissions, and also because the
6 representations played a significant role in the value of the vehicles. As
7 Volkswagen well knew, its customers, including Plaintiffs and California members
8 of the Class, highly valued that the vehicles they were purchasing or leasing were
9 clean diesel cars, and they paid accordingly.

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13 250. Volkswagen had a duty to disclose the emissions deception it engaged
14 in with respect to the Defeat Device Vehicles because knowledge of the deception
15 and its details were known and/or accessible only to Volkswagen, because
16 Volkswagen had exclusive knowledge as to implementation and maintenance of its
17 deception, and because Volkswagen knew the facts were not known to or
18 reasonably discoverable by Plaintiffs or California members of the Class.
19 Volkswagen also had a duty to disclose because it made general affirmative
20 representations about the qualities of its vehicles with respect to emissions
21 standards, starting with references to them as clean diesel cars, or cars with clean
22 diesel engines, which were misleading, deceptive, and incomplete without the
23 disclosure of the additional facts set forth above regarding its emissions deception,
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1 the actual emissions of its vehicles, its actual philosophy with respect to
2 compliance with federal and state clean air law and emissions regulations, and its
3 actual practices with respect to the vehicles at issue. Having volunteered to provide
4 information to Plaintiffs, Volkswagen had the duty to disclose not just the partial
5 truth, but the entire truth. These omitted and concealed facts were material because
6 they directly impact the value of the Defeat Device Vehicles purchased or leased
7 by Plaintiffs and California members of the Class. Whether a manufacturer's
8 products comply with federal and state clean air law and emissions regulations, and
9 whether that manufacturer tells the truth with respect to such compliance or non-
10 compliance, are material concerns to a consumer, including with respect to the
11 emissions certifications testing their vehicles must pass. Volkswagen represented
12 to Plaintiffs and California members of the Class that they were purchasing clean
13 diesel vehicles, and certification testing appeared to confirm this—except that,
14 secretly, Volkswagen had subverted the testing process thoroughly.

20 251. Volkswagen actively concealed and/or suppressed these material
21 facts, in whole or in part, to pad and protect its profits and to avoid the perception
22 that its vehicles did not or could not comply with federal and state laws governing
23 clean air and emissions, which perception would hurt the brand's image and cost
24 Volkswagen money, and it did so at the expense of Plaintiffs and California
25 members of the Class.
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1 252. On information and belief, Volkswagen has still not made full and
2 adequate disclosures, and continues to defraud Plaintiffs and California members
3 of the Class by concealing material information regarding both the emissions
4 qualities of the Defeat Device Vehicles and its emissions deception.
5

6 253. Plaintiffs and California members of the Class were unaware of the
7 omitted material facts referenced herein, and they would not have acted as they did
8 if they had known of the concealed and/or suppressed facts, in that they would not
9 have purchased purportedly “clean” diesel cars manufactured by Volkswagen,
10 and/or would not have continued to drive their heavily polluting vehicles, or would
11 have taken other affirmative steps in light of the information concealed from them.
12 Plaintiffs’ and California members of the Class’ actions were justified.
13 Volkswagen was in exclusive control of the material facts, and such facts were not
14 known to the public, Plaintiffs, or California members of the Class.
15

16 254. Because of the concealment and/or suppression of the facts, Plaintiffs
17 and California members of the Class have sustained damage because they own
18 vehicles that are diminished in value as a result of Volkswagen’s concealment of
19 the true quality and quantity of those vehicles’ emissions and Volkswagen’s failure
20 to timely disclose the actual emissions qualities and quantities of millions of
21 Volkswagen- and Audi-branded vehicles and the serious issues engendered by
22 Volkswagen’s corporate policies. Had Plaintiffs and California members of the
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1 Class been aware of Volkswagen's emissions deception with regard to the vehicles
2 at issue, and the company's callous disregard for compliance with applicable
3 federal and state law and regulations, Plaintiffs and California members of the
4 Class who purchased or leased new or certified previously owned vehicles would
5 have paid less for their vehicles or would not have purchased or leased them at all.
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8 255. The value of Plaintiffs' and California members of the Class' vehicles
9 has diminished as a result of Volkswagen's fraudulent concealment of its
10 emissions deception, which has greatly tarnished the Volkswagen and Audi brand
11 names attached to Plaintiffs' and California members of the Class' vehicles and
12 made any reasonable consumer reluctant to purchase any of the Defeat Device
13 Vehicles, let alone pay what otherwise would have been fair market value for the
14 vehicles.
15
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17 256. Accordingly, Volkswagen is liable to Plaintiffs and California
18 members of the Class for damages in an amount to be proven at trial.
19

20 257. Volkswagen's acts were done wantonly, maliciously, oppressively,
21 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs and
22 California members of the Class' rights and the representations that Volkswagen
23 made to them, in order to enrich Volkswagen. Volkswagen's conduct warrants an
24 assessment of punitive damages in an amount sufficient to deter such conduct in
25 the future, which amount is to be determined according to proof.
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1 258. Plaintiffs plead this count pursuant to the law of California on behalf
2 of all California members of the Class.

3
4 **COUNT XII**
5 **VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR**
6 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
7 **(Cal. Civ. Code §§ 1791.1 & 1792)**

8 259. Plaintiffs incorporate by reference all preceding allegations as though
9 fully set forth herein.

10 260. Plaintiffs bring this Count on behalf of the California members of the
11 Class.

12 261. Plaintiffs and the other Class members who purchased or leased the
13 Defeat Device Vehicles in California are “buyers” within the meaning of Cal. Civ.
14 Code § 1791(b).

15 262. The Defeat Device Vehicles are “consumer goods” within the
16 meaning of Cal. Civ. Code § 1791(a).

17 263. Volkswagen is a “manufacturer” of the Defeat Device Vehicles within
18 the meaning of Cal. Civ. Code § 1791(j).

19 264. Volkswagen impliedly warranted to Plaintiffs and the other Class
20 members that its Defeat Device Vehicles were “merchantable” within the meaning
21 of Cal. Civ. Code §§ 1791.1(a) & 1792, however, the Defeat Device Vehicles do
22 not have the quality that a buyer would reasonably expect.
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1 265. Cal. Civ. Code § 1791.1(a) states: “Implied warranty of
2 merchantability” or “implied warranty that goods are merchantable” means that the
3 consumer goods meet each of the following:
4

- 5 (a) Pass without objection in the trade under the contract description.
6 (b) Are fit for the ordinary purposes for which such goods are used.
7 (c) Are adequately contained, packaged, and labeled.
8 (d) Conform to the promises or affirmations of fact made on the container
9 or label.
10

11 266. The Defeat Device Vehicles would not pass without objection in the
12 automotive trade because they do not pass EPA and state law emissions
13 regulations.
14

15 267. Because the “defeat device” falsely causes Defeat Device Vehicles to
16 obtain EPA certification and pass emissions tests when in fact they omit 40 times
17 the permitted level of NO_x, they are not safe to drive and thus not fit for ordinary
18 purposes.
19

20 268. The Defeat Device Vehicles are not adequately labeled because the
21 labeling fails to disclose the “defeat device” that causes emissions systems of the
22 Defeat Device Vehicles to become inoperative during normal use.
23

24 269. Volkswagen breached the implied warranty of merchantability by
25 manufacturing and selling Defeat Device Vehicles containing the “defeat device.”
26
27
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1 Furthermore, Volkswagen's fraudulent use of the "defeat device" has caused
2 Plaintiffs and the other Class members to not receive the benefit of their bargain
3 and has caused Defeat Device Vehicles to depreciate in value.
4

5 270. As a direct and proximate result of Volkswagen's breach of the
6 implied warranty of merchantability, Plaintiffs and the other Class members
7 received goods whose dangerous and dysfunctional condition substantially impairs
8 their value to Plaintiffs and the other Class members. Plaintiffs and the other Class
9 members have been damaged as a result of the diminished value of Volkswagen's
10 products, the products' malfunctioning, and the nonuse of their Defeat Device
11 Vehicles.
12

13
14 271. Pursuant to Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiffs and the
15 other Class members are entitled to damages and other legal and equitable relief
16 including, at their election, the purchase price of their Defeat Device Vehicles, or
17 the overpayment or diminution in value of their Defeat Device Vehicles.
18

19
20 272. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and the other Class
21 members are entitled to costs and attorneys' fees.
22

23 **COUNT XIII**
24 **VIOLATION OF THE OHIO CONSUMER SALES PRACTICES ACT**
(Ohio Rev. Code §§ 1345.01 *et seq.*)

25 273. Plaintiffs incorporate by reference all preceding allegations as though
26 fully set forth herein.
27
28

1 274. Plaintiffs bring this Count on behalf of the Ohio members of the
2 Class.

3
4 275. The Ohio Consumer Sales Practices Act (“OCSPA”) is codified at
5 Ohio Rev. Code § 1345.01 *et seq.* The OCSPA prohibits a supplier from
6 committing an unfair or deceptive act or practice in connection with a consumer
7 transaction. Ohio Rev. Code § 1345.02(A). The statute is broad, defining a
8 consumer transaction as “a sale, lease, assignment ... of an item of goods ... to an
9 individual for purposes that are primarily personal, family, or household [uses].”
10 Ohio Rev. Code § 1345.01(A). The OCSPA further provides that “a consumer”
11 has a private cause of action for violations of the statute. Ohio Rev. Code §
12 1345.09.
13
14
15

16 276. Volkswagen is a “supplier” as defined by the OCSPA, Ohio Rev.
17 Code § 1345.09 (C), and Plaintiffs and the class members are “consumers” under
18 the OCSPA. Ohio Rev. Code § 1345.09 (D).
19

20 277. Volkswagen had a statutory duty to refrain from unfair or deceptive
21 acts or practices in the design, development, promotion, sale and/or manufacture of
22 the unlawful Defeat Device Vehicles.
23

24 278. Volkswagen engaged in unfair and deceptive practices by representing
25 that the Defeat Device Vehicles —which were marketed for personal, family, or
26 household uses — have characteristics, uses, benefits, and qualities which they do
27
28

1 not have, such as low emissions; and (2) intentionally failing to disclose and/or
2 concealing the known defects of the Defeat Device Vehicles.

3
4 279. It is well established in OCSA jurisprudence that material omissions
5 and misrepresentations concerning a product constitute a violation of the statute. It
6 is also considered a deceptive act or practice for purposes of the OCSA if a
7 supplier makes representations, claims or assertions of fact in the absence of a
8 reasonable basis in fact. Ohio Admin. Code § 109:4-3-10(A). Defendants had no
9 reasonable basis in fact for the representations it made that the Defeat Device
10 Vehicles were “CleanDiesel” or offered efficient fuel economy and
11 environmentally friendly emissions combined with excellent performance. Indeed,
12 Defendants intentionally designed the defeat device and then actively concealed it
13 and the defects with the Defeat Device Vehicles from regulators and consumers.

14
15
16
17 280. The facts concealed and/or not disclosed by Volkswagen Companies
18 to Plaintiffs and members of the Class are material facts that a reasonable person
19 would have considered important in deciding whether or not to purchase a Defeat
20 Device Vehicle.

21
22 281. Volkswagen’s unlawful and deceptive practices were designed to
23 mislead a reasonable customer and to induce customers into buying or leasing
24 Defeat Device Vehicles, and, in fact, Volkswagen’s practices caused Plaintiffs and
25
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1 class members to not only purchase but also pay a premium for the Defeat Device
2 Vehicles where they otherwise would not have done so.

3
4 282. Those unlawful and deceptive acts has further caused damages to
5 Plaintiffs and the Class who now own a vehicle (or vehicles) with a diminished
6 resale value.

7
8 283. As Volkswagen's unlawful actions damaged Plaintiffs and the Class,
9 they are entitled to damages and other relief, including attorneys' fees, as provided
10 under the OCSPA.

11
12 **COUNT XIV**
13 **VIOLATION OF THE COLORADO CONSUMER PROTECTION ACT**
14 **(Colo. Rev. Stat. §§ 6-1-101, *et seq.*)**

15 284. Plaintiffs incorporate by reference all preceding allegations as though
16 fully set forth herein.

17 285. Plaintiffs bring this Count on behalf of the Colorado members of the
18 Class.

19 286. The Colorado Consumer Protection Act ("CCPA") prohibits
20 "deceptive trade practices," including knowingly making "a false representation as
21 to the source, sponsorship, approval, or certification of goods," or "a false
22 representation as to the characteristics, ingredients, uses, benefits, alterations, or
23 quantities of goods." Colo. Rev. Stat. § 6-1-105(1)(b), (e).
24
25
26
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28

1 287. Plaintiffs and Class members are persons under the CCPA. *See* Colo.
2 Rev. Stat. § 6-1-102.

3
4 288. Plaintiffs and Class members are actual or potential consumers of
5 Volkswagen's goods because, among other things, they bought or leased vehicles
6 from Volkswagen. *Id.* § 6-1-113(1)(a).

7
8 289. Plaintiffs bought or leased those vehicles because of the deceptive
9 trade practices described in this Complaint: Volkswagen's intentional design,
10 marketing, and sale of diesel engines with the intent to deceive regulators and the
11 public into thinking those engines were "clean."

12
13 290. In the course of Volkswagen's business, it willfully misrepresented
14 and failed to disclose, and actively concealed, that the CleanDiesel Engine System
15 was non-EPA compliant, and the use of the "defeat device" in Affected Vehicles as
16 described above.

17
18 291. Volkswagen therefore knowingly made false representations
19 concerning goods, services, or property, and Volkswagen advertised goods,
20 services, or property under certain ulterior or secretive motives, in violations of the
21 CCPA.
22

23
24 292. Plaintiff and the other Class members were injured as a result of
25 Volkswagen's violations because they paid a premium for Defeat Device vehicles
26
27
28

1 and did not receive the benefit of their bargain, and those vehicles have suffered a
2 diminution in value.

3
4 293. Volkswagen's deceptive acts also present an ongoing risk to Plaintiffs
5 and the class because its vehicles emit unlawful and harmful levels of emissions.

6
7 **COUNT XV**
8 **VIOLATION OF THE MARYLAND CONSUMER PROTECTION ACT**
9 **(Md. Code Ann., Com. Law § 13-102 *et seq.*)**

10 294. Plaintiffs incorporate by reference all preceding allegations as though
11 fully set forth herein.

12 295. Plaintiffs bring this Count on behalf of the Maryland members of the
13 Class.

14 296. The Maryland Consumer Protection Act ("MCPA" or "Act") sets
15 "minimum statewide standards for the protection of consumers across the State"
16 and prohibits unfair and deceptive trade practices in the offer, sale, lease, rental, or
17 loan of any consumer good. Md. Code Ann., Com. Law §§ 13-102(b)(1), 13-
18 303(1)-(2).
19

20
21 297. Plaintiffs and Class members are consumers under the MCPA. See
22 Md. Code Ann., Com. Law § 13-101(c)(1).
23

24 298. Plaintiffs' and Class members' purchase or lease of Defeat Device
25 Vehicles are non-commercial transactions covered by the Act. See *id.* § 13-303(1)-
26 (2),
27
28

1 299. Volkswagen’s intentional design, marketing, and sale of dirty diesel
2 engines as “clean,” and Volkswagen’s subsequent attempt to conceal that scheme,
3 constitutes a knowing deception, misrepresentation, suppression, concealment, or
4 omission of a material fact of great importance to the transactions at issue:
5 Plaintiffs’ and Class members’ decision to buy Volkswagen diesels.
6

7
8 300. Those unfair or deceptive practices have harmed Plaintiffs and Class
9 members: they paid a premium for “clean” diesel vehicles that are, in fact, dirty,
10 and the resale value of those cars has fallen.
11

12 **COUNT XVI**
13 **VIOLATION OF UTAH CONSUMER SALES PRACTICES ACT**
14 **(Utah Code Ann. § 13-11-1 *et seq.*)**

15 301. Plaintiffs incorporate by reference all preceding allegations as though
16 fully set forth herein.

17 302. Plaintiffs bring this Count on behalf of the Utah members of the
18 Class.
19

20 303. The purpose of the Utah Consumer Sales Practices is “to protect
21 consumers from suppliers who commit deceptive and unconscionable sales
22 practices[.]” Utah Code Ann. § 13-11-2.
23

24 304. As a manufacturer, distributor, and seller of commercial vehicles,
25 Volkswagen is a “supplier” under the Act. When Plaintiff and Class members
26 bought or leased vehicles, those were “consumer transactions” under the Act.
27
28

1 305. By surreptitiously installing “defeat devices” in its diesel engines to
 2 cheat regulators and deceive the public, Volkswagen knowingly and intentionally
 3 engaged in deceptive and unconscionable trade practices. It was not a bona fide
 4 error.
 5

6 306. By deceiving the public and regulators and touting their diesel
 7 passenger cars as “clean,” low-emission vehicles, Volkswagen unlawfully
 8 indicated that the “subject of the consumer transaction”—the Defeat Device
 9 Vehicles—had some “sponsorship, approval, performance characteristics,
 10 accessories, uses, or benefits” that they did not, and that those vehicles were of a
 11 “standard, quality, grade, style or model” that they were not.
 12

13 307. As a result of Volkswagen’s deceptive and unconscionable behavior,
 14 Plaintiffs and the Class have suffered losses and are entitled to actual damages or
 15 \$2,000, whichever is greater, as well as court costs and fees.
 16

17
 18 **COUNT XVII**
 19 **VIOLATION OF HAWAII UNIFORM DECEPTIVE TRADE PRACTICES**
 20 **ACT**
 21 **(“Hawaii UDTPA”)**

22 308. Plaintiffs reallege and incorporate by reference all paragraphs as
 23 though fully set forth herein.

24 309. Plaintiffs bring this Count on behalf of the Hawaii members of the
 25 Class.
 26
 27
 28

1 310. Plaintiffs and members of the Class are persons under Haw. Rev. Stat.
2 § 480-2.

3
4 311. Volkswagen is engaged in trade and commerce under Haw. Rev. Stat.
5 § 480-2.

6 312. Volkswagen's conduct has caused and continues to cause substantial
7 injury to Plaintiffs, Hawaii consumers.

8
9 313. Consumers paid a premium for Defeat Device Vehicles based on
10 Volkswagen's material representations about their low emissions, fuel efficiency,
11 and performance.

12
13 314. Those representations, which were likely to mislead consumers acting
14 reasonably under the circumstances, have now been established to be false.

15
16 315. Consumers' Defeat Device Vehicles have precipitously lost value
17 since the truth about them surfaced on September 18, 2015.

18
19 316. Because Plaintiffs and other consumers reasonably relied on
20 Volkswagen's material representations about the Defeat Device Vehicles, they
21 could not have reasonably avoided their injury.

22
23 317. Volkswagen's unfair and deceptive practices directly, foreseeably,
24 and proximately caused Plaintiffs and the Class an ascertainable loss and other
25 damages.

COUNT XVIII
VIOLATION OF GEORGIA UNIFORM DECEPTIVE TRADE PRACTICES
ACT
(O.C.G.A. § 10-1-370, *et seq.*)

318. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

319. Plaintiffs bring this Count on behalf of the Georgia members of the Class.

320. The Georgia Uniform Deceptive Trade Practices Act (“Georgia UDTPA”), prohibits “deceptive trade practices,” including the “misrepresentation of standard or quality of goods or services,” and “engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.” O.C.G.A. § 10-1-372(a).

321. Volkswagen, Plaintiffs, and Class members are persons under the UDTPA. Id. § 10-1-371(5).

322. By surreptitiously installing “defeat devices” in its diesel engines to cheat regulators and deceive the public, Volkswagen engaged in deceptive trade practices prohibited by the Georgia UDTPA. Volkswagen also actively concealed the true nature of the defeat device and misrepresented that Defeat Device vehicles had characteristics, like low emissions, that they do not.

325. Going forward, Plaintiffs and the class are likely to be damaged by Volkswagen's deceptive trade practices because, inter alia, the value of the vehicles they leased or purchased have been greatly diminished, and any recall repair is likely to impair the performance of their vehicles.

328. Oklahoma’s Consumer Protection Act (“OCA”) prohibits, among other things, misrepresenting that goods or services have certain characteristics,

1 ingredients, uses, or benefits; misrepresenting that goods or services are of a
2 particular standard, quality, grade, style, or model; advertising goods or services
3 with intent not to sell them as advertised; and committing any unfair or deceptive
4 trade practice, including any misrepresentation, omission or other practice that
5 deceives or could reasonably be expected to deceive or mislead a person to that
6 person's detriment. 15 Ok. Stat. §§ 15-752, 753.
7

8
9 329. Defendants and Plaintiffs are both "Persons" under the OCPA. *Id.*
10 § 15-752. When Plaintiffs and the other Class members bought or leased Defeat
11 Device Vehicles, or otherwise transacted with Defendants and its agents, it was a
12 "consumer transaction" under the OCPA. *Id.*
13

14 330. And Plaintiffs and the Class members bought or leased those vehicles
15 primarily for personal, household, or business purposes.
16

17 331. In manufacturing, marketing, and selling Defeat Device Vehicles,
18 Defendants willfully failed to disclose and actively concealed the "defeat device"
19 in those vehicles, as described in detail elsewhere in this complaint, thereby
20 violating the OCPA.
21

22 332. Defendants did so with the intent to mislead or deceive consumers
23 like Plaintiffs and the Class, and as a result of relying on that deception Plaintiffs
24 and the class were injured by the violation and have suffered actual losses.
25
26
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333. Plaintiffs and Class members therefore allege and demand that Defendants is liable to them for the payment of their actual damages and the costs of litigation, including reasonable attorney's fees. *Id.*, § 15-761.1.

334. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

336. New York’s General Business Law § 349 makes unlawful
“[d]eceptive acts or practices in the conduct of any business, trade or commerce.”

338. Those deceptive practices caused damages to Plaintiffs and the Class, by, among other things, causing them to pay a premium for purportedly “clean” diesels and causing them to come into possession of a vehicle (or vehicles) that now has a diminished resale value.

339. Volkswagen’s deception implicates the public interest because Volkswagen represented that its vehicles complied with state and federal pollution laws designed to protect public health.

340. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

342. New York’s General Business Law § 350 prohibits “[f]alse advertising in the conduct of any business, trade or commerce,” including “labeling, of a commodity . . . if such advertising is misleading in a material respect,” taking into account “the extent to which the advertising fails to reveal facts material in the light of . . . representations [made] with respect to the commodity”

1 344. Volkswagen’s misrepresentations and omissions regarding the EPA
2 compliance or clean nature of its vehicles was misleading in a material respect;
3 those statements were at the core of Volkswagen’s marketing.
4

5 345. Plaintiffs and the other Class members reasonably relied on those
6 statements and, as a result, have suffered injury, including the loss of money or
7 property. Had Plaintiffs and the other Class members known the truth about
8 Volkswagen’s Defeat Device Vehicles, they would not have purchased or leased
9 those vehicles, or would have paid far less to do so.
10

11 346. Volkswagen acted willfully or knowingly in deceiving Plaintiffs and
12 the other Class members, who are therefore entitled to treble damages.
13

14
15 **COUNT XXII**
16 **VIOLATION OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE**
17 **TRADE PRACTICES ACT**
18 **(N.C. Gen. Stat. §§ 75-1.1, *et seq.*)**

19 347. Plaintiffs incorporate by reference all preceding allegations as if
20 fulling set forth herein.
21

22 348. Plaintiffs bring this claim on behalf of the North Carolina members of
23 the Class.
24

25 349. Under the North Carolina Unfair and Deceptive Trade Practices Act,
26 N.C. Gen. Stat. §§ 75-1.1, *et seq.* (“UDTPA”), it is unlawful to engage in “[u]nfair
27 methods of competition in or affecting commerce, and unfair or deceptive acts or
28 practices in or affecting commerce[.]”

1 350. Volkswagen's marketing and selling of Defeat Device Vehicles
2 affected commerce, as defined in the UDTPA.
3

4 351. Defendants willfully concealed and/or failed to disclose the fact that
5 the CleanDiesel engines in the Defeat Device Vehicles did not comply with state
6 and federal regulations.
7

8 352. Defendants also concealed and/or failed to disclose the fact that the
9 CleanDiesel Engines contained defeat devices.
10

11 353. As a result, Defendants has engaged in unlawful trade practices, and
12 have represented that the Defeat Device Vehicles have characteristics and qualities
13 that they do not, in fact, possess; represented that the Defeat Device Vehicles are
14 of a particular quality or standard when they are not; advertising the Defeat Device
15 Vehicles with the intent not to deliver or sell them as advertised; and otherwise
16 engaging in conducted intended or likely to deceive.
17

18 354. Volkswagen's conduct has caused the injuries to Plaintiffs and the
19 Class.
20

21 355. Having acted with willful and conscious disregard of the rights and
22 safety of others, subjecting Plaintiffs and the Class to cruel and unjust hardship as a
23 result, Plaintiffs and the Class should be awarded punitive damages.
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1 356. Plaintiffs, individually and on behalf of the Class, seek treble damages
2 pursuant to N.C. Gen. Stat. § 75-16, and an award of attorney's fees pursuant to
3 N.C. Gen. Stat. § 75-16.1.
4

5 **X. REQUEST FOR RELIEF**

6 WHEREFORE, Plaintiffs, individually and on behalf of members of the
7 Class respectfully request that the Court enter judgment in their favor and against
8 Volkswagen, as follows:
9

10 A. Certification of the proposed Class, including appointment of
11 Plaintiffs' counsel as Class Counsel;
12

13 B. An order temporarily and permanently enjoining Volkswagen from
14 continuing the unlawful, deceptive, fraudulent, and unfair business practices
15 alleged in this Complaint;
16

17 C. Injunctive relief in the form of a recall or free replacement program as
18 well as public injunctive relief necessary to protect public health and welfare;
19

20 D. Costs, restitution, damages, and disgorgement in an amount to be
21 determined at trial;
22

23 E. Revocation of acceptance;

24 F. Damages under the Magnuson-Moss Warranty Act;

25 G. For treble and/or punitive damages as permitted by applicable laws;
26
27
28

1 H. An order requiring Volkswagen to pay both pre- and post-judgment
2 interest on any amounts awarded;

3
4 I. An award of costs and attorneys' fees; and

5 J. Such other or further relief as may be appropriate.
6

7 **XI. DEMAND FOR JURY TRIAL**

8 Plaintiffs demand a jury trial.

9 RESPECTFULLY SUBMITTED this 23rd day of September, 2015.

10 KELLER ROHRBACK L.L.P.

11 By /s/Matthew J. Preusch

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